

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114670151>

CASON
XC 13
- 576



150
Government
Publications

R-1

R-1

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Monday 11 May 1998

Journal des débats (Hansard)

Lundi 11 mai 1998

Standing committee on
resources development

Comité permanent du
développement des ressources

Organization

Organisation



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 11 May 1998

Lundi 11 mai 1998

The committee met at 1528 in committee room 1.

ELECTION OF CHAIR

Clerk of the Committee (Ms Donna Bryce): Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

Mr William Saunderson (Eglinton): Yes, there are. I would like to nominate Mrs Elliott, the MPP for Guelph.

Clerk of the Committee: Are there any further nominations? There being none, I declare the nominations closed and Mrs Elliott elected Chair. Mrs Elliott, if you would like to take your seat. Congratulations.

The Chair (Mrs Brenda Elliott): Thank you, colleagues.

ELECTION OF VICE-CHAIR

The Chair: I then ask for nominations for Vice-Chair. Are there any nominations?

Mr David Christopherson (Hamilton Centre): I nominate Mr Preston.

Mr Doug Galt (Northumberland): Could I second that?

The Chair: Dr Galt seconds that nomination. Seeing no further nominations, I declare the nominations closed and Mr Preston elected as Vice-Chair.

APPOINTMENT OF SUBCOMMITTEE

The Chair: Our third order of business is to call for a motion to appoint a business subcommittee.

Mr Pat Hoy (Essex-Kent): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mrs Elliott as chair, Mr Galt, Mr Hoy and Mr Christopherson; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

The Chair: Is there any discussion on this motion, colleagues?

Seeing none, all those in favour? Opposed? The motion is carried.

Any further business?

Mr Christopherson: It's just not the same without demonstrators.

The Chair: You know what? Give us time.

Mr Peter L. Preston (Brant-Haldimand): I move we adjourn.

The Chair: There's a motion to adjourn, colleagues. We are adjourned to be called at the will of the Chair.

The committee adjourned at 1531.

CONTENTS

Monday 11 May 1998

| | |
|-----------------------------------|---|
| Election of Chair | 1 |
| Election of Vice-Chair | 1 |
| Appointment of subcommittee | 1 |

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr William Saunderson (Eglinton PC)

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service

CA2 ON
XL 13
-S'76



R-2

R-2

ISSN 1180-4378

Legislative Assembly of Ontario

Second Intersession, 36th Parliament

Assemblée législative de l'Ontario

Deuxième intersession, 36^e législature

Official Report of Debates (Hansard)

Tuesday 11 August 1998

Journal des débats (Hansard)

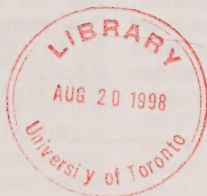
Mardi 11 août 1998

Standing committee on resources development

Energy Competition Act, 1998

Comité permanent du développement des ressources

Loi de 1998 sur la concurrence
dans le secteur de l'énergie



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Tuesday 11 August 1998

Mardi 11 août 1998

*The committee met at 0905 in committee room 1.*ENERGY COMPETITION ACT, 1998
LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

The Chair: (Mrs Brenda Elliott): Good morning, everyone, and welcome to the hearings on Bill 35. The standing committee on resources development is called to order for the purposes of receiving submissions on Bill 35.

This promises to be a very interesting series of hearings. I could make a whole lot of bad jokes about how we are about to be enlightened and that the presentations will be illuminating, but I will spare you those bad former Minister of Energy jokes and say that I think we are going to find this not only a series of historical presentations but an opportunity to enact some interesting legislation for this province and for our citizens.

Colleagues, our first order of business is to attend to the subcommittee report. Do I have someone who will move that for the committee, please? Ms Johns. Any discussion on that report? All in favour? Opposed? It's adopted.

MINISTRY OF FINANCE

The Chair: We move on then to our next order of business. On your agenda you will see that our first presenter was to have been Minister Wilson. That has been changed, so instead we are going to switch our first two presenters and in fact we'll hear from the Ministry of Finance first. The first presenter is Mr Dorey, the assistant deputy minister and chief economist. Welcome, please make yourself comfortable.

Colleagues, as you know, our first presenter has an hour of time to use. The time remaining from his presentation will be equally divided between the caucuses and of course we'll begin with the official opposition.

Welcome, and if you would kindly introduce your colleagues for the Hansard record, you can begin any time.

Mr Steve Dorey: Bill McLean is from the office of budget and taxation, Karen Sadler-Brown is from the office of economic policy, and Christl Beck is from the office of budget and taxation.

There is a small set of slides that is being distributed.

I'd like to thank you for this opportunity to present the financial aspects of electricity sector reform and to deal with your questions. It's a real pleasure.

By way of introduction, I'd like to take a few minutes to outline the principles, legislative measures and work now under way as the government prepares to implement the financial reforms associated with electricity sector reform.

As you know, last November the government released a white paper that set out a comprehensive plan to restructure the electricity industry in Ontario. The purpose of that plan was essentially to move the industry from one based on a vertically integrated monopoly passing through all costs to consumers into a commercial and competitive industry where consumers can choose their own suppliers and markets will determine prices.

The first slide you have simply outlines that transition of the industry from the monopoly status to the competitive status. Again, as you know, the white paper was followed by legislation introduced in June and a financial update produced by the Ministry of Finance in July. That update described the proposed restructuring of Ontario Hydro and outlined the government's approach to managing the debts and liabilities associated with that restructuring. It also described options for dealing with any debt that is stranded, options which were identified by a variety of stakeholders and experts in consultations over the spring.

The process of designing electricity reform has been an extremely open one. We have had dozens of meetings with stakeholders, investors and the public to discuss the principles and options in the white paper and subsequent documents. We have found broad support for the proposed direction and a good deal of constructive advice on how these reforms should be implemented. That advice is reflected in the draft legislation you have before you. I think there is widespread recognition of the benefits of greater customer choice, market-driven investment decisions, increased efficiency, and safe and reliable electricity at the lowest possible prices.

The white paper presented a nine-point plan — that's the second slide you have — to reform the electricity industry. They are obviously interrelated measures. The Ministry of Finance is working closely with the Ministry of Energy, Science and Technology, the Market Design Committee, the Ontario Energy Board and others to implement the nine-point plan. The final three are really the three that are the focus for the Ministry of Finance. Those three are establishing a level playing field on taxes, regulation and financing; restructuring Ontario Hydro into new companies with clear business mandates; and putting the electricity companies on a sound economic and financial footing.

Let me briefly expand on those three points. With respect to a level playing field, it's essential to create an industry with true competition. Market participants have to face comparable taxation and regulatory obligations. As a result, the legislation provides for payments in lieu of taxes approximating private sector norms for public sector entities for federal, provincial and local tax equivalents. In order to ensure the lowest possible prices and to deal effectively with stranded debt, the government has committed to dedicate all of those payments in lieu to dealing with that stranded debt until it's eliminated. Part VI of the bill provides the authority to design and levy those payments in lieu of taxes.

Government-owned companies will also be expected to borrow on commercial terms without the benefit of the government guarantee. Again, that's an essential element of creating a level playing field.

In terms of creating new companies with clear business mandates, Ontario Hydro will be divided into four new companies: two commercial and two non-commercial. The Independent Market Operator will run the market, the Financial Corp will be established to service and retire the existing debt, and there will be two commercial companies, designated in the legislation as the Ontario Electricity Generation Corp and the Ontario Electric Services Corp. Those two companies will be registered under the Ontario Business Corporations Act, given new commercially oriented boards of directors and mandates that reflect their role in the competitive electricity market. Part IV of the bill provides the authority to do that.

Finally, with respect to sound economic and financial footing, the new companies will require financial structures that allow them to operate as viable commercial companies and to borrow at commercial rates. At the same time, they will be expected to maximize their value for the shareholders — the taxpayers of Ontario — by finding all possible opportunities for more efficient operation.

Determining the optimum financial structure for these new companies will require a careful evaluation of the new companies' assets and their earning capacity. We have retained leading investment bankers and industry experts to help us with that task, and it is well underway. The process, though, is a complex one, because there is a strong interaction between the various elements of reform.

The third slide you have here gives you a bit of a sense of how the various pieces of the puzzle have to come

together. It's clear, for example, that the design of the market will have a significant impact on the earning capacity of the companies going forward, as will the regulations, as will prices. So we have experts looking at all of those things and working closely with the Market Design Committee and others to deal with those.

The recapitalization is expected to require that the new companies be relieved of some of their existing debt to reflect their new commercial status and likely price developments, likely price declines, in the competitive market. That debt is said to be stranded, at least stranded from the perspective of the companies, in that the successor companies cannot reasonably be expected to service that debt and retire it in a competitive and commercial market.

The following slide you have gives a sense of the process of how we go about calculating stranded debt. The first step is to look at the total debt and liabilities of Ontario Hydro, to do a detailed valuation of the new companies and their future earning capacity. The result of that is stranded debt. A good deal of the stranded debt, though, is effectively self-financing. It will have, for example, payments in lieu of tax streams that will service the associated debt. The part that's not self-financing from dedicated revenue streams we've referred to as residual stranded debt. That will come primarily from declines in prices, and to the extent that that residual stranded debt exists, we may have to resort to competition transition charges on consumers to recover that.

Experience in other jurisdictions has shown that competition generally does lead to lower prices for producers and to greater efficiencies throughout the electricity market. For example, in England and Wales residential taxpayers have seen a 15% rate decline since 1990.

While lower prices are a key goal of electricity industry reform everywhere, they do create transitional difficulties. Lower prices in other jurisdictions have had the effect of making it impossible for utilities to fully recover the debt servicing costs associated with some past investments, such as investment in nuclear capacity at relatively high interest rates or investment in non-utility generation contracts with above-market prices. Since those investments were undertaken on behalf of all ratepayers in a monopoly regime, regulators in most jurisdictions have provided for the recovery of those costs, the costs embedded in those obligations, from ratepayers via competition transition charges.

This is roughly analogous to a situation where interest rates fall. You live with a 12% mortgage and interest rates are 7%. You would like to live in the new world and certainly you can once you've discharged your existing obligations. It's that kind of transition to the new lower-price world.

As some of you are aware, the ministry retained Dr Bryne Purchase from the school of policy studies at Queen's University to undertake on its behalf a series of consultations with stakeholders and experts on options for recovering stranded debt and on the principles that should

guide the design of any recovery mechanism. The final slide addresses some of the things that Dr Purchase heard.

Stakeholders were clear that any competition transition charge should be efficient, fair and transparent. "Economic efficiency" is defined there as a charge that's administratively simple and does not cause market participants to incur costs they would not otherwise incur; it doesn't distort the market. "Fairness" was generally taken to mean that all ratepayers ought to share the cost of meeting past obligations. "Transparency" means that market participants want to see clearly that any charge is used only to meet existing and unavoidable obligations.

Stakeholders were also supportive of the consultative process undertaken to date and urged ongoing consultation as recovery mechanisms are designed.

Part VI of the bill provides the authority to design and levy a competition transition charge on consumers and generators. It also provides the ability to exempt classes of customers, and that provides the ability to make sure that no one would pay any transition charge twice because they were both a generator and a consumer.

With respect to the impact of electricity reform on electricity rates, the introduction of competition and commercial discipline into the electricity industry is designed to ensure the lowest possible electricity prices.

0920

The current price freeze runs to the end of the year 2000. Nothing in the proposed legislation will lead to higher electricity prices. The government has committed that all incremental payments will be devoted to dealing with existing Ontario Hydro debt obligations and to residual stranded debt until that debt is retired.

Finally, in conclusion, as I noted earlier, there is broad support for the move from monopoly to competition. There is agreement that this provides the best guarantee of safe and reliable electricity at the lowest possible prices, prudent investment and a strong job-creating economy.

From a financial perspective, this requires that we balance three objectives: the creation of a truly competitive market; the preservation and creation of value in the successor companies on behalf of the shareholders, the people of Ontario; and the fair and expeditious repayment of stranded debt. The Electricity Act provides the framework to achieve those three objectives.

The Chair: We have just slightly over 15 minutes for questions from each caucus, and we'll begin with the official opposition.

Mr Sean G. Conway (Renfrew North): Thank you, Mr Dorey and colleagues. I very much appreciate your attendance this morning. I'd like to get directly to my questions.

Mr Dorey, two years ago, in May 1996, the Macdonald advisory committee on electricity reform made very plain that an absolutely critical step in laying the groundwork for a competitive marketplace was the breakup of the generation company that is Ontario Hydro. They were emphatic in that recommendation. I can cite page 56 from the Macdonald committee in 1996.

Just a few weeks ago, the government of Ontario's special advisory committee, the Market Design Committee, in language that could not be clearer or blunter, made plain their support for the Macdonald committee's view that competition, which is the lifeblood of this policy, will occur to the benefit of Ontario's residential and other electricity consumers if and only if the market power of Ontario Hydro is broken up much beyond what is contemplated in this bill that we have before this committee.

The government has clearly chosen to ignore central advice that would, we are led to believe, establish a truly competitive marketplace. How do you, from a financial point of view, expect to get the benefits that competition is supposed to provide when Bill 35, which is the bill before this committee, specifically does not accept the advice of the Market Design Committee and the Macdonald committee, namely, the breakup of the massive market power of Ontario Hydro's current generating capacity?

Mr Dorey: The bill does clearly separate generation from transmission. That was an important step in terms of bringing competition to the market. The government determined in its white paper last fall, as you're aware, that in its view it was not necessary at this point to break up Ontario Hydro into parts to achieve competition.

Certainly it was necessary to weigh the increasing trend across North America to larger utilities which serve broader markets, to balance that with the advantages of breaking up existing utilities. When the government looked at that balance, it determined that there are other ways to achieve the market power mitigation goal without giving up the potential gains from a larger utility.

Mr Conway: I think I heard you say that competition was critical to delivering downstream benefits to electrical consumers in this province.

Mr Dorey: Absolutely.

Mr Conway: Absolutely. The government's own committee, the Market Design Committee, the expert committee, just a few weeks ago said you would not get true competition if this government, if this Legislature, did not break up Ontario Hydro's generating capacity beyond the two successor companies that are contemplated in this bill and the attendant policy documents.

How are we going to get the benefits of competition advertised by the government, on the one hand, and not break up Ontario Hydro's massive market power along the lines suggested by not just the Market Design Committee last month but the Macdonald committee two and a half years ago?

Mr Dorey: The Market Design Committee is working actively with Ontario Hydro and with oversight or observation from the government on mechanisms to control market power in the market going forward. There are a variety of mechanisms you can use to achieve that, including leases, vesting contracts and so on. We are in the process of looking at options to achieve that without breaking up the company.

Mr Conway: Mr Dorey, it's mid-August and we've had some weeks now to look at Bill 35. We've had the benefit of the Ministry of Finance's document which was

released six weeks ago, Electricity Competition: A Financial Update. So my next question is very specific. Since the question of stranded debt is absolutely critical to this whole policy, and to the millions of Ontario electricity consumers stranded debt has got to be important because it's obviously a central part of the equation that might very well affect rates, my first question is, in mid-August, what are you able to tell this committee is your best estimate, the best estimate of the Ontario Ministry of Finance, as to the likely or projected stranded debt that will be left behind once the new commercial companies are established?

Mr Dorey: At this point, our view is that it's premature to produce an estimate of stranded debt. The final determination of stranded debt will depend to a large extent on the design of the market, the regulatory framework, and the detailed evaluation of the companies and their earning capacity that's now under way.

Mr Conway: It may be premature for the Ministry of Finance, but the committee is seized of this bill. We are in the committee stage. You would agree that the stranded debt is likely to be in the billions of dollars, would you not?

Mr Dorey: Again, I think it's premature, but yes, it will be in the billions of dollars.

Mr Conway: So you would agree that the stranded debt is likely to be in the billions of dollars. If it is premature today for the Ministry of Finance to address more specifically this central question, when do you, Mr Dorey, expect to be in a position, as a very important public trustee in this matter, to tell this committee and the people of Ontario what that stranded debt is likely to be? Next week? Next month? Next quarter? Next year? The next millennium?

Mr Dorey: The recapitalization of the companies and the financial restructuring of them will require a determination of that. The companies are to be launched early next year. That work is ongoing as quickly as we can do it. Sometime this fall, we will determine the amount of debt the successor companies can reasonably carry and the amount of stranded debt.

Mr Conway: Turning to Bill 35 and looking specifically at sections 85, 86 and 87, your government's policy contemplates a range of new charges to retire the stranded debt and the residual stranded debt. A number of these charges are new. I want to ask you to confirm that in this bill you contemplate the imposition or levying of new charges, one of which will be payments in lieu of federal and provincial corporate taxes. In other words, the successor Ontario Hydro companies, Genco and Servco, will, upon the passage of this bill, begin to pay for the first time payments in lieu of provincial and federal corporate taxes. Is that not correct?

Mr Dorey: That's correct.

Mr Conway: Those new charges, those new hydro taxes, will be paid by electricity consumers in the province. Is that correct?

Mr Dorey: What are represented there are payments that electricity consumers are currently making. The

payments are dedicated clearly to dealing with existing Ontario Hydro debt. As we remove an amount of debt from those corporations to make them capable of operating as commercial companies bearing a commercial tax burden, if you like, the effect of that will be to strand some amount of debt. By dedicating those payments in lieu of taxes to dealing with that particular debt stream, it's effectively self-financing. So it's not effectively a new burden on taxpayers; it's something taxpayers are paying in their rates today.

0930

Mr Conway: But we have not before paid a specific charge on our Hydro bills in lieu of federal corporate taxes. Is that not correct?

Mr Dorey: The consumers of Ontario have paid about 40% of their electricity bill to deal with the debt of Ontario Hydro, both servicing and retiring debt, and these payments will go to deal with that existing debt. It's simply a restructuring of the company and the charges to achieve the end of dealing with existing debt.

Mr Conway: Mr Dorey, section 87 of Bill 35 proposes for the first time that all of us who get our electricity from municipal utilities like Toronto Hydro, Ottawa Hydro or, in my case, Pembroke Hydro — under the provisions of 87(1) and 87(2) of Bill 35, you, the Ministry of Finance, will upon the passage of this bill take in perpetuity an annual cut of the gross adjusted revenues of the municipal utilities. How is that not a new permanent hydro or electricity tax, particularly since, under the provisions of subsection 87(2) of the bill, it is clearly contemplated that upon the complete retirement of the residual stranded debt, your cut, your slice of the adjusted gross revenues of all municipal utilities, will carry on in perpetuity to the credit of the Ontario treasury? How is that not a new permanent electricity tax?

Mr Dorey: In order to establish a level playing field to create a commercial market, it is necessary to put market participants on an equal basis, a level playing field, if you like, with respect to taxation. Therefore, those charges are being levied on the local utilities to put them on the same basis as comparable and competing commercial enterprises. That money will be dedicated to dealing with stranded debt, and so effectively it will not increase the price of electricity. It will deal with a cost that's already there, those debt payments, until that stranded debt is retired.

At that point, the government then clearly faces a choice: Does it continue to receive that revenue? Presumably it has to maintain a level playing field. The government, though, can decide to cut taxes either somewhere else in the electricity sector or somewhere else in the entire tax world, if it chooses to do that, in order to ensure that there is no incremental tax burden. That's a choice the government is going to have to make.

Mr Conway: Well, it's very clearly made in subsection (2) of section 87 of this bill. Let me read what the bill says: At a date prescribed by the cabinet, "all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation."

I know my time is limited. I want to come to the impact of these charges, these new electricity taxes, on rates, particularly in the period between the year 2000 and, let's say, the year 2005. Experts have said that once the rate freeze is lifted sometime within the year, it is impossible for these new charges not to have an adverse impact on the hydro or electricity rates that will be paid by the millions of Ontario electricity consumers. In fact, one expert told a conference not too long ago that the adverse impact on general electricity rates in the transitional period — that is, the first few years of deregulation — could be in the order of 15% to 20% annually; that is, a 15% to 20% increase on general hydro rates.

How is it possible for you to argue in the paper that was published a few weeks ago, *Electricity Competition: A Financial Update*, that when the rate freeze ends within the next year and when these new electricity charges or new hydro taxes are imposed on, particularly, residential electricity consumers — how is it possible for people to ignore the expert advice which says, "Yes, there will be, particularly in the next few years, adverse impacts on the general electricity rates that all residential and farm consumers will be expected to pay"?

Mr Dorey: I think you are referring to Patricia Mohr's comments that prices could rise by 1.3 cents following the end of the current price freeze. I understand that was taken from an analysis based on the Dominion Bond Rating Service that estimated stranded debt, but neglected to take account of the efficiencies this reform is intended to produce.

Those efficiencies are quite simple. There are studies that show efficiencies in the distribution sector as large as tens of millions in the GTA alone. We know this bill provides pension reform that will provide a saving to the new companies approaching \$200 million a year in pension payments. There is a variety of efficiencies that will occur in the industry as a result of competition. If you take account of those, there is no need for electricity prices to rise.

Mr Conway: Mr Dorey, some of those efficiencies are obviously going to occur. I support competition. I think most of the committee supports competition. But we have before us what we didn't have when we last discussed this six weeks ago: I've got the Market Design Committee's report of early July and it couldn't be clearer. The centre-piece to make competition work and get at the big efficiencies you need to write down a massive, multi-billion dollar stranded debt is in generation.

The Market Design Committee — do you want me to read it? Let me read from page 3 of —

The Chair: I remind you that you have about 30 seconds.

Mr Conway: The Market Design Committee said what the Macdonald committee said, that if you don't deal with the market power, if you don't break up Genco, Ontario Hydro's massive generating capacity, you will not get the competitive benefits and the significant efficiencies you must have to deliver the promised benefits to the

residential and farm electricity consumers, particularly in the first five years of this policy.

Mr Dorey, what do you know in this connection that the Market Design Committee and the Macdonald committee didn't seem to figure out, particularly with the view to ensuring that the millions of residential and farm electricity consumers in this province will see real benefits in rates at the same time as the big electrical consumers in this province?

Mr Dorey: The government has clearly come to terms with the issue of: Is it necessary to break up Ontario Hydro at this point to achieve the benefits of competition? Its view is that's not necessary. The Minister of Energy has received that report. I assume he will be responding to it shortly and that's where I would look for an answer.

Mr Conway: Thank you.

The Chair: Moving to the third party, Mr Lessard.

Mr Wayne Lessard (Windsor-Riverside): Welcome, Mr Dorey. I appreciate the opportunity to hear from you. I know there are a number of members of this committee, and the public in general, who are interested in your opinions and your expertise in this area.

One of the questions I have is one that's been touched on by Mr Conway. I want to put it to you directly: that any possible savings that consumers may be able to derive as a result of competition, if we all agree that competition may result in decreased rates for consumers, is dependent on the guess with respect to stranded debt being made correctly, and also that Ontario Hydro is broken up to such an extent that there truly is competition in the electricity market, and not just deemed or imaginary competition.

My question is, what would the impact be if the guess with respect to stranded debt is wrong, whether it's too high or too low? Could you explain that to us, please?

Mr Dorey: When we've consulted with stakeholders and experts on the design of stranded debt recovery mechanisms one of the things that was pretty clear is that it's a very difficult number to determine and ultimately you're going to get it wrong.

As you know, a swing of one cent, for example, in the price of electricity will swing the amount of stranded debt by something in the order of \$10 billion. Among the advice we got was that any charge should be designed in such a way that it is flexible enough to adjust to movements in prices or other developments which result in more or less stranded debt going forward.

Certainly, the update we provided in July provides a framework for discussing how one might design a charge which could be adjustable to reflect price movements and other developments going forward, and at the same time ensure that there's commercial discipline at the successor companies and that they are not insulated from the market. By having a flexible charge it is possible to deal with errors in initial estimates of the size of stranded debt and not impose a burden on either taxpayers or ratepayers.

0940

Mr Lessard: You've said this morning that it's premature to estimate what the amount of the stranded

debt may be, but you've agreed that it's in the billions of dollars, so we know that it's at least more than a billion at this point in time. But what you're really doing, no matter how it is you determine this amount, is taking a wild stab in the dark, wouldn't you say? If you're wrong in picking that number, I'm interested in knowing what impact that is going to have on the broken-up assets of Ontario Hydro. What happens to the new corporations that are set up as a result of Bill 35 if the stranded debt is estimated to be too high or too low?

Mr Dorey: In determining the appropriate amount of debt to assign to the new companies, a key element is that they be able to operate as viable commercial companies and to borrow effectively at commercial rates. We are, therefore, looking at investment grade ratings — BBB or A — that would allow them to do that. That implies a certain debt structure, a certain amount of debt they would be able to carry in that kind of a world.

They're then going to go forward as commercial companies and, as all commercial companies, will have to deal with the fact that they have either too little or too much debt going forward. That will have an impact on the dividends, for example, that they pay to their owners: us. If they're too large, we could use those dividends to offset the impact on competition charges.

There is the capacity to protect ratepayers. This is not, though, about protecting the new utilities going forward. The new utilities are going to have to go forward as commercial enterprises and prosper or not in the commercial market.

Mr Lessard: Is there any provision in Bill 35 to accommodate either a raising or a lowering of the stranded debt? Is there that flexibility or is this is a number that we have to pick at some point in time — the Minister of Finance has to pick this number — and then we're stuck with it for all eternity?

Mr Dorey: It's really a two-step process. As I went through it, we will determine on a once and for all basis the appropriate capitalization for the new companies associated with their value. The distribution, though, between the stranded debt that's self-financing from payments in lieu of taxes, dividend payments and other sources, and that which is necessary to recover from ratepayers through any competition charge, is possible to change, and in fact the legislation provides that from time to time the Minister of Finance will adjust those numbers or those rates accordingly.

Mr Lessard: That number you're referring to is what's called the residual stranded debt. That's what you're referring to. In fact, that number is going to be determined by the Minister of Finance and it's a number that can't be appealed by anyone to any court once he deems that amount to be in place. Isn't that correct?

Mr Dorey: That's correct.

Mr Lessard: That is the number that's going to be used for the purposes of determining these other charges that Mr Conway has referred to, and that is, the payments in lieu of federal taxes. Is that —

Mr Dorey: No. The payments in lieu of federal and provincial taxes will be based upon comparable tax payments paid by comparable utilities. Private sector norms will be used to determine the appropriate payments in lieu of taxes and the amount of debt or the present value of the associated debt will have to be removed.

Mr Lessard: If there were a competitive company that was involved in the market, it would be paying taxes actually to the federal government, right? In this case, they wouldn't be making those payments to the federal government; they'd be making them to the Ontario government, so the Ontario government would be collecting federal taxes.

I know that in the election campaign in 1995, and before that, Mike Harris always said, "A tax is a tax." Whether it's a user charge, a special levy or a competition transition charge, whatever you want to call it, it's going to be a tax in this case and it is going to impact on electricity rates. It is a federal tax. It isn't going to be going to the federal government; it's going to be going to the provincial coffers, and once the government has its hands on those taxes, I think it would be pretty hard to give up.

That's a political question I don't expect you to respond to. But I do want to ask you whether there need to be some negotiations with the federal government to collect federal income taxes by the province and hang on to them.

Mr Dorey: I think you made two or three points there. The money is not going to the government. It's going to the Ontario Hydro Financial Corp, which will use it to deal with the existing debt.

Second, on the question of transparency, the Ontario Hydro Financial Corp will report annually on the status of stranded debt, the money it has taken in, what it's used for and so on. There will be full transparency to ensure that this money is in fact used for the purpose it's designed for.

Third, with respect to the federal government, the constitutional provisions provide that effectively governments don't tax governments. The way that's interpreted in federal law is that if entities are more than 90% owned publicly by the province or municipality, they're not subject to federal tax. So that's not an issue that has to be negotiated. The law is pretty clear on that, and that's based on the constitutional provisions.

Mr Lessard: Perhaps it may be transparent. I guess my question for the minister when he arrives is, why is it that when he determines the amount of the residual stranded debt and determines when that amount's going to be paid off, his decision is final and can't be appealed in any way or challenged by anyone? That's a question I'm going to ask him.

In Electricity Competition: A Financial Update, some of the things that have been suggested with respect to the breakup of Ontario Hydro into separate companies are the possibility of joint ventures and other strategic partnerships. I noticed that in one of the little asterisks in the slides, which I don't think you showed us this morning, and I was wondering what may have been referred to in

that. What's your understanding of "joint ventures and other strategic partnerships"?

Mr Dorey: I think the electricity reform is in large measure taking advantage of the expertise and money that the private sector can bring to this industry, either by investing themselves or entering into joint ventures, leases, a variety of possible arrangements — asset sales — with the Ontario Hydro successor companies, so that's certainly left open. The successor companies will be commercial ventures and will be encouraged to go forward and find constructive and profitable opportunities to work with partners, whether those are local utilities, private sector enterprises or others.

Mr Lessard: Some of these other, private sector partners could be corporations with shareholders who are other than citizens of Ontario. Would you agree with that?

Mr Dorey: That's right.

Mr Lessard: It sounds to me a lot like privatization. Even though the minister has said to us on numerous occasions that there are no plans to privatize Ontario Hydro, by the way it's been described in this book and the way you've responded to my question, it really does open the door to the privatization of Ontario Hydro and there don't seem to be any limits in the bill.

Mr Dorey: The intent of the bill is to bring commercial discipline to the industry. That doesn't rule out privatization, but it doesn't require it. These will operate as commercial entities in competition with the private sector.

0950

Mr Lessard: Let me just understand you when you say that there really aren't any restrictions on privatization of Ontario Hydro. From what you're saying, it opens the door but it doesn't put any limits on privatization.

Mr Dorey: In the bill itself there are no restrictions, that I'm aware of, on the form that partnerships could take.

The Chair: We move now to the government caucus, beginning with Mrs Johns, the parliamentary assistant for energy.

Mrs Helen Johns (Huron): Chair, I'd like to share my time with John Baird, who is a parliamentary assistant for finance.

I just have a very few questions, Mr Dorey. There was quite a bit of talk this morning by Mr Conway about the breakup of Genco. I know we're here to talk about Bill 35, and that really comes into the Market Design Committee, but can you speak to the issue of the Market Design Committee report? Can you tell us if the market design report, even though it had suggestions about Genco, came up with some recommendations that would in effect curtail market power of Ontario Hydro? I know this is best answered by Steve Probyn, who's coming later today, so I don't expect you to go into great detail, but could you just talk to that issue for a second?

Mr Dorey: Yes. I think the Market Design Committee looked at the options available to it to deal with market power in the context it had and determined that there is a variety of them. Certainly it is possible to enter into vest-

ing contracts, for example; those are contracts that fix the price for a large proportion of Ontario Hydro's production so that it takes away any incentive to manipulate the market.

It looked at the possibility of leases so that Ontario Hydro, for example, could lease some of its facilities to private sector enterprises. Again, the private sector enterprise would not have an incentive to take advantage of market power on behalf of Ontario Hydro; it would pursue its own interests. They're looking at a variety of other mechanisms and those could include asset swaps and a variety of other things.

Mrs Johns: When you were answering some of the questions by Mr Conway you kept referring back to the need to have a level playing field. You talked about having to have taxes so that the municipal electric utilities, for example, would be on a level playing field with anybody else who came in to provide that service. Can you tell us and the people who might be watching what's so important about having a level playing field within this market?

Mr Dorey: It's absolutely essential that businesses that are competing with each other compete on the same basis, that they're subject to the same kinds of charges, that they not have a particular advantage because they're government-owned, or a particular disadvantage, for that matter. The municipal utilities are in a similar position to the successor corporations. Many of them will, for example, enter into the retail business in competition with other retail providers. If you're going to have an efficient market there that gets the true benefits of competition, it is necessary that they all operate with the same kinds of obligations and rights. That's really what we mean by "level playing field."

Mrs Johns: So you're saying that if we didn't put those taxes on those corporations, there would be a disadvantage to the private sector individuals who might come into the marketplace?

Mr Dorey: That's right.

Mrs Johns: Can you tell me now if the ratepayers of Ontario are paying for the debt charges that have been incurred by inefficiencies or government or Ontario Hydro decisions over the last 30 years.

Mr Dorey: Ontario Hydro has, as you know, about \$31 billion of debt at this point, and approximately 40% of the electricity bill currently goes to deal with servicing and retiring the existing Ontario Hydro debt. Those obligations were — some may have been prudent; some may have been imprudent — certainly all undertaken in the interests of the ratepayers of Ontario and they're obligations that are not going to go away. The government's desire at this point is to deal with those obligations, have ratepayers deal with those obligations rather than to put that burden on taxpayers. I think that's reasonable. That's what has been done in most jurisdictions in dealing with that kind of legacy debt when you move to a competitive environment.

Mrs Johns: The ratepayers of electricity right now are paying for the debt charges and the ratepayers will be

paying for the debt charges after Bill 35 comes into effect. There's really no difference, although the fees will be much more transparent after we get through this process, so people will know exactly what is for the debt and what's for operating costs and existing services they're getting. Is that correct?

Mr Dorey: That's right. The existing debt payments will continue because those are obligations that have to be covered. We're taking advantage of the fact that in the transition to competition a level playing field is essential. There is a revenue source here. If in fact that revenue source were directed to the government coffers, either from the local utility's payments in lieu of taxes or the successor corporation's payment in lieu of taxes, that would be a leakage from the electricity system and could potentially lead to higher prices. That's precisely why the government has chosen not to do that but to direct that revenue to dealing with the associated debt.

Mrs Johns: I'm going to pass to my colleague, but as a ratepayer of electricity I'm absolutely amazed that I pay 40% of my bill to the debt that Hydro has incurred over the last 30 years.

Mr John R. Baird (Nepean): Thank you very much for appearing this morning and for the time you've put into your presentation.

I want to revisit some of the points that my colleague from Huron mentioned. One of the previous questioners talked about the importance of competition and expressed I think not an invalid concern about the power that Ontario Hydro has had and what kind of power it will have in a competitive market, which I think we are all concerned about, and about the need to create a level playing field and does this bill even go far enough to creating a level playing field, which is something I guess we'll hear from other presenters and have time to reflect on over the next few weeks.

Could you have a competitive environment where there is one player who we all acknowledge has had far too much power and who, some would charge, will continue to have too much power if they were exempt from paying taxes? Could you have competition where one player, who already has too much power, would not have to pay taxes like every other company and every other individual in the province?

Mr Dorey: I think that would be very difficult. When people make investment decisions, they're going to have to take account of all the consequences of those investment decisions, including the tax implications and so on, and to have a tax-exempt entity competing directly with a taxable entity would create a situation where you would seriously disadvantage the taxable entity and move back towards monopoly. That would be the general effect of it.

Mr Baird: Would it seriously disadvantage or would there just be no one on the field to play, let alone having a level playing field? You'd only have one team. For a company the size of Ontario Hydro, one of the very largest corporations in the province of Ontario, let alone in the country, to be exempt from having to pay taxes, and the commensurate MEUs, would there even be another

team on the field, let alone a level playing field or anything approximating it?

Mr Dorey: I can't answer that but it would be a good question to ask people like Mr Probyn, who I understand is appearing this afternoon and is in that business: How would he like to compete against a tax-exempt utility like Ontario Hydro?

Mr Baird: Looking at other monopolies that have been broken up, I can't imagine having to ask Bell Canada or AT&T Canada or Sprint Canada to say, if Bell Canada didn't have to pay taxes, what that would do to the other companies participating in that marketplace. I would charge that it wouldn't be a question of a level playing field; it would only be one team on the playing field and I think we're all concerned that that one team has in the past exercised far too much power and control in this area.

I wanted also to talk about the issue of the tax revenue. Are there any new tax regimes being established under this bill or are they just using the existing tax regimes that are already in place?

Mr Dorey: The payments in lieu of taxes essentially subject what will be commercial entities in the industry, the government-owned commercial entities, to existing tax regimes. The bill provides that the local utilities will pay an adjusted gross receipts tax, and that's slightly different from the corporate and capital taxes that would be paid by a commercial entity, but it will be designed to be equivalent or approximate that particular charge.

1000

The reason for going with that particular provision is concern that utilities be treated equally, so if one utility were to organize itself as a non-profit utility, and next door, in the next municipality, you had a commercial utility, you want to have comparable tax treatment between the two so as not to discriminate between the residents. The decision was to look at an adjusted gross receipts tax, which takes a proportion of gross revenues, rather than being based directly on profit.

There is also provision in the act, though, that the minister can in fact apply the comparable commercial charges to those utilities if they are organized on a commercial basis.

Mr Baird: Does that revenue go to the consolidated revenue fund or does it go to paying off the stranded debt?

Mr Dorey: That revenue goes to stranded debt.

Mr Baird: The more I've read and the more I've studied the issue, it astonishes me that well over \$30 billion in debt was built up by successive governments of all three stripes over the last number of years and it has not been a good end result for taxpayers in terms of the customers of Ontario Hydro having to pay that.

I don't have the Macdonald report, but I do have the report by Nepean Hydro, which came with my Nepean Hydro bill. They have a little chart, "Where your electricity dollar is spent." It says here that 10 cents go to Nepean Hydro and the other 90 cents go to the two operations of Ontario Hydro generation and transmission. I looked into that 90 cents of my Nepean Hydro dollar and we're

paying about 40 cents, 44 cents to the Ontario Hydro debt right now. Is that an approximate amount?

Mr Dorey: Sorry, about 44%?

Mr Baird: Of your current Hydro dollar would go to pay for Ontario Hydro debt now.

Mr Dorey: That's right.

Mr Baird: In introducing a new competitive environment, that debt can't just disappear. We can't just renege on that debt. We can't just make it go away. I see nothing in Bill 35 that's going to do that. The tax revenue coming from creating a level playing field will essentially go to just paying that current 40%, 44% of my hydro bill now. Is that correct?

Mr Dorey: Yes. That's interest and principal payments over the last few years by Ontario Hydro.

Mr Baird: So essentially you would have a situation where I'm paying 44 cents now on Hydro debt and then, under a competitive environment, I would continue to pay that 44 cents.

Mr Dorey: Yes. That may decline over time but that's about right.

Mr Baird: So there's really no change. It's the same now and the same the day after Bill 35 is not just enacted but when competition arises after the year 2000.

Mr Dorey: Yes. The difference is that as long as Hydro has its monopoly, it's straightforward to incorporate those charges directly in the electricity bill of every consumer, like you. When the monopoly is not there, you don't want to create a situation where you, who deal with Nepean Hydro and Ontario Hydro, are paying for that historic debt and somebody who chooses to deal with another utility doesn't. That's why you have to structure it so that everybody bears their fair share. We've heard very loudly from stakeholders when we've talked to them that it's simply unacceptable that some ratepayers would carry part of this burden and others wouldn't.

Mr Baird: It's almost like a mortgage on a house. Just by moving you can't renege on the mortgage; you've got to replace that revenue.

Mr Dorey: That's right.

The Chair: I believe that concludes our questions for you. Thank you very much for being our leadoff presenter today. We very much appreciate it.

MINISTER OF ENERGY, SCIENCE AND TECHNOLOGY

The Chair: Our next presenter: We welcome Minister Wilson himself. Please come forward. Minister, we're delighted to have you join us this morning. You may begin at any time.

Hon Jim Wilson (Minister of Energy, Science and Technology): Thank you, Madam Chair and members of the committee. I apologize for being somewhat delayed this morning but I'm very pleased to be here.

"This...could turn out to be the greatest single contribution made this decade to Ontario's economic development." That's what Allan Barnstaple, president of the Independent Power Producers' Society, had to say

about Bill 35, the bill under consideration with your committee. I hope that when these hearings conclude, all of you will agree with Mr Barnstaple's observation.

May I say it's a pleasure to appear before you as you begin this important public process to consider the government's proposed Energy Competition Act.

If enacted, Bill 35 is legislation which will ensure that the people of Ontario receive the kind of safe, reliable and affordable electricity supply that they demand and deserve. Competition will create new jobs and increase opportunities for investment in our huge \$10-billion electricity sector.

This legislation represents a tremendous opportunity for us to modernize our electricity system to meet the new realities too long ignored by previous governments and previous Hydro regimes. This Bill will put the customer in the driver's seat.

I and many members here today have said before that Ontario Hydro, as envisioned by Sir Adam Beck more than a century ago, has served this province well. Hydro can proudly lay claim to much of the credit for the success of Ontario's economy.

Inexpensive, reliable electricity is largely responsible for making Ontario the economic engine of Canada, and rural electrification helped bring jobs and prosperity to the rural and remote areas of our vast province. Now we have a historic opportunity to build on this great heritage and ensure that Ontario retains its position as one of the best places in the world to live, work and raise a family.

We are not alone in seeking to introduce competition in the electricity industry. In the United States, President Clinton has proposed that every American be allowed to choose their electricity supplier by the year 2003. Competition is seen as so vital in that jurisdiction that people like Tim Burns, the chairman of the Electricity Customer Choice Group, says, "Each day that we delay opening the electricity marketplace to competition robs consumers and businesses of \$200 million." The success of competition to date has been worldwide. Customer savings have been very significant in countries like Great Britain, New Zealand, Argentina and wherever electricity monopolies have been exposed to the discipline of a competitive market.

I and many of the presenters, I would presume, who will appear before you over the next couple of weeks believe a competitive market would offer enormous benefits to all Ontarians by creating new jobs and an economy that is attractive to investors. It would ensure a reliable and safe supply of electricity at the lowest possible price while offering protection to consumers both big and small.

1010

It would restore the financial soundness and viability of the electricity system and ensure a level playing field for all participants. And our proposed legislative framework is designed to be flexible enough to respond to the healthy evolution of a robust marketplace.

Bill 35 is another promise made and kept by this government. It follows closely the policy directions set out in

our white paper, entitled *Direction for Change: Charting a Course for Competitive Electricity and Jobs in Ontario*.

Our proposed legislation is also consistent with the recommendations of industry and customer experts on our Market Design Committee, the select committee on nuclear affairs, the Macdonald commission, and the Minister's Electricity Transition Committee.

So you can see that we didn't get to this point all by ourselves. It was a co-operative effort. We did our homework by consulting — extensively — with all of our stakeholder groups and interested parties. These public hearings create yet another opportunity for interested parties to express their views and make suggestions on improving Bill 35.

You will hear over the next two weeks concerns expressed about generation market power. I am here to tell you that we will not permit Genco, Ontario Hydro's generation successor company, to abuse its market position. Both the Independent Electricity Market Operator and the new and strengthened Ontario Energy Board, headed by Floyd Laughren, will be responsible for promoting competition in the best interests of customers. For example, the Ontario Energy Board will use its licensing powers to guarantee that cross-subsidization won't occur. Monopoly businesses, the wires business, will not be allowed to subsidize the competitive elements of the utility, thus ensuring a level playing field.

Bill 35 and the introduction of a competitive electricity market is good for the environment. This legislation is consistent with our government's commitments to maintain and enforce strong limits on emissions and to meet national and international commitments.

Competition will open the Ontario market to generators of more environmentally friendly sources of electricity like wind, solar and biomass, and for the first time, customers will be able to demand green sources of energy from energy suppliers.

Some critics may attempt to frighten you with talk about stranded debt. I would say don't be fooled. Whatever debt there is, it is not new. Bill 35 doesn't add one cent of new cost to this industry. It is the same debt you and I and every other ratepayer pays right now. It's embedded in our monthly hydro bill. Stranded debt will be recovered in a way that is fair to everyone.

On the issue of taxes, my position and that of our government is clear. We are opposed to any sort of tax increases. Prior to 1995, I spent five years at Queen's Park fighting crippling new taxes introduced by previous governments. As part of the Mike Harris government, I have been proud of our track record — 66 tax cuts over the past three years and an average 30% cut in personal income tax for Ontarians.

Let me be clear. Bill 35 is not about new taxes. It's about levelling the playing field. The Canadian Energy Research Institute tells us that "true competition requires that the success of any one competitor is due to superior performance, not built-in advantages." In fact, their study goes on to say that publicly owned distributors should be "subject to similar requirements for items such as borrowing costs, rates of return, and taxes...." Again, Bill

35 is about levelling the playing field for all participants in the electricity sector.

Introducing competition is an opportunity too important to pass up. It means more jobs and new investment. It means that electricity customers would have greater choice, lower prices and a safe and reliable power supply. It would mean fair competition on a level playing field for all competitors.

Our proposed Energy Competition Act will cause Genco to lose market share — that's something I think we're all very much aware of — but we're not throwing out the baby with the bath water. Instead, we are creating a new opportunity for Genco to become one of the top 15 generators on the North American scene, serving markets from Illinois to New York and from Ontario to Kentucky.

My dream is that the new Ontario Hydro will once again be a symbol of pride for our province, returning a healthy profit back to its shareholders — each and every Ontarian. While it will give up market share here at home, it will take the northeastern United States by storm. I am confident that the new Ontario Hydro can and will succeed as a power to be reckoned with in the North American market, but it will require the united efforts of management, staff and unions to make that work.

Our legislation would also offer new and exciting opportunities for municipalities and local electrical utilities across the province. For example, Bill 35 clarifies, once and for all, the ownership and control of municipal utility assets. Over \$5 billion in equity will be vested with municipal governments. I note that just last week Cornwall sold its utility for \$68 million, almost three times its book value.

In the past, local utilities have had their hands tied by outdated legislation and oversight by their regulator and competitor, Ontario Hydro. Bill 35 would provide them with business flexibility. They will be able to seek out new partnerships and ventures which would allow them to compete and respond to new and innovative opportunities for themselves and, most importantly, for their customers.

Ontario has more than 275 local utilities. That's 12 times more than the rest of Canada combined. Competition will encourage these utilities to come together, to amalgamate, to provide better, more efficient services while reducing costly duplication. That will mean better service and lower prices. For example, here in the GTA distribution rates vary between 8% and 24%. A 1993 study by Mississauga Hydro estimated that efficiencies could result in an incredible \$100 million in savings. That's 25% of distribution costs. More recently, Ontario Hydro and the Municipal Electric Association estimated 8.5% in savings across the entire province, achieved through greater efficiencies in providing services and purchasing.

In addition to cost savings, customers will also enjoy greater protection under Bill 35. The bill proposes to continue rate protection for rural and remote electricity customers. It ensures that distribution companies fulfill their obligations to connect and serve their customers.

It also proposes protection against unethical natural gas and electricity marketers. All marketers selling electricity

or natural gas to residential customers would require licences. In the interim, I want to assure members that we are monitoring these activities very closely and we are prepared to take action to protect customers in the transition. All participants in the new electricity market would be licensed by the Ontario Energy Board.

Once again, the proposed Energy Competition Act would ensure that strong environmental protection measures are built into the new electricity market. Bill 35 allows for emission caps and trading, disclosure of emissions by generators, and emissions standards for those wanting to sell electricity in Ontario.

Over the next several months, staff from the Ministry of the Environment and from my ministry, along with the Market Design Committee, will continue to work with environmental groups and other experts to make sure that these standards are fair and that they indeed do protect our environment.

Bringing competition to the electricity market is not a one-day project, it is an ongoing process, and as all of you know, there is still much to be done. There is, however, an unprecedented level of support for the changes that this bill proposes. Public opinion strongly endorses the idea that the status quo is not working.

This public consultation process that you have begun today will contribute significantly to the process of bringing full competition to Ontario's electricity sector. Your input will help take us one step closer to boosting the economy by encouraging job creation and investment, one step closer to ensuring a level playing field for all who want to take part in this new market and one step closer to allowing gas markets to function more efficiently. Our goal is to make Ontario's electricity industry competitive in world markets while it contributes to the retooling of our province's economy.

Madam Chair, I want to thank you for this opportunity to appear before the committee this morning. I look forward to hearing your comments and the comments of all the participants who will appear before you over the next couple of weeks. I can assure you that we will consider each and every comment very carefully as we move towards presenting a final bill to the Legislature, hopefully soon after it resumes, provided these hearings go well.

I thank you for your patience and your time and I'd be happy to answer any questions you have.

1020

The Chair: Thank you, Minister Wilson. We'll begin with questioning from the third party.

Mr Lessard: My concern, Minister, is for the consumers of Ontario Hydro, not just for the large industrial consumers but for residential consumers and small business people. The most salient feature of your initiative is the assurance that rates for hydro are going to go down. What commitment, what guarantee is there in Bill 35 that rates will go down for residential consumers in Ontario?

Hon Mr Wilson: Thank you for the question, Mr Lessard. Throughout the legislation please keep in mind that in the new regimes that are being set up, whether it be

the Ontario Energy Board or the Independent Electricity Market Operator or the successor companies to Ontario Hydro, the cardinal rule here is that the customer always comes first. The Ontario Energy Board, for example, as part of its new mandate, and its existing mandate in the gas industry because it doesn't regulate electricity at this point, must always take into account in its decision-making all consideration to the customer coming first and to ensuring that lower rates are sought in any decisions it may make.

Second, the experience around the world to date in jurisdictions that have introduced competition in the electricity market is that prices have fallen. Throughout the world many countries, many states and other provinces have moved or are moving in the same direction that Bill 35 proposes, and we have no experience with higher rates.

There are three areas really where we expect to see savings. One is, as the debt is paid down, we will ensure that every dollar of savings is passed on to the customers.

Second, we expect significant savings from the distribution system itself, through amalgamation and greater efficiencies in the municipal electrical utilities. Toronto would be a very good example with its amalgamation. Its rates are significantly higher than, for example, Mississauga's. Toronto's overhead costs in distribution are in the 20% range and Mississauga's are in the 8% range. By their own admission, Toronto expects to see significant savings because of the amalgamation that was caused through the megacity.

Third, we certainly expect, and the experience in other jurisdictions is that with competitive generators, with some check on the price actually of electricity — because Ontario Hydro for the past 100 years has never had any competition. It has never had its prices checked against a market. From the experience in other jurisdictions, given that over 70% of the cost of your home hydro bill is costs that are incurred in the generation of electricity, we expect to see significant savings through competition in the generation business.

Mr Lessard: If you're so convinced that rates for consumers are going to go down, are you prepared to put that commitment in the bill, a guarantee that consumers will have lower rates for electricity in Ontario?

Hon Mr Wilson: I would certainly be prepared to entertain any wording that may come forward. At this point, when you're setting up a free market, it's very difficult to put that in the type of legislation that's before you, but clearly we wouldn't be doing this as a government if it didn't lead to lower rates. We're all about bringing back Ontario to the competitive position it once held.

Mr Lessard: Another concern that I have is with respect to consumers who are being approached by brokers right now. We know the experience that has occurred with respect to gas brokers and we know that consumers have been taken advantage of. You have addressed that in your remarks, indicating that you are monitoring this change and that you're prepared to take action during this transition period against the brokers

who are out there selling electricity contracts that they may or may not be able to deliver on. What steps are you prepared to take to ensure that consumers aren't subject to abuse by brokers who are out there in the marketplace now?

Hon Mr Wilson: It's a very good question. We do get a lot of complaints, as does the Ministry of Consumer and Commercial Relations. The ministry has a phone line available for people to call in and quite a few people have availed themselves of that service. They track down and investigate every single complaint. I think the best message we could pass along at this time is that people shouldn't sign anything, that there is not a competitive market right now for electricity and that they should not be signing up with marketers or brokers or agents at this time.

I give full credit to the Municipal Electric Association, which I think got very good coverage in recent weeks with respect to their campaign — I fully endorse the campaign — to warn people not to sign anything. We take very seriously any complaints that come to our attention.

Mr Lessard: Consumers are also interested in security of supply. We all want to be confident that when we turn on the light switch, the lights are going to go on. One of the provisions of Bill 35 is to repeal the Power Corporation Act, which puts an obligation to ensure that Ontario Hydro maintains security of supply for consumers in Ontario. What will be the impact of the repeal of the Power Corporation Act on security of supply to ensure that consumers are going to have electricity when they need it?

Hon Mr Wilson: We certainly have made provisions for that. One of the primary responsibilities of the Independent Electricity Market Operator is to make sure the lights are always on and to respond to the demand of the market and of the customers. It will be a non-profit crown corporation that has, as I said, the primary responsibility for exactly that. So the obligation to supply electricity continues in the system, and the obligation to connect customers, for example, someone who is at the end of the concession line. It may be quite a high cost to connect somebody in a remote area. The local distributors, which for the most part will continue to be the municipal electrical utilities, continue to have the obligation to connect those customers. So the benefits of the current system are contained in Bill 35.

Mr Lessard: What about emergency planning? We've seen the disaster that took place during the ice storm this past winter when the infrastructure of Ontario Hydro was destroyed in part of the province. What sort of assurances are there in Bill 35? What mechanisms are there in this new reality, this broken-up electricity system we have that will ensure that hospitals, factories, nursing homes and schools are going to be able to get power in the wake of an emergency such as the one we had last winter?

Hon Mr Wilson: Perhaps you could see Bill 35 as an improvement on the current situation, because you have two bodies now, along with all of the local distribution companies, that are required to ensure that people continue to receive their electricity and that repairs are made in

times of emergency: the Independent Electricity Market Operator, the Ontario Energy Board and all of the distribution companies.

For example, the Ontario Energy Board, I suspect, would very quickly pull the licence of any local distribution company that failed to connect customers who needed to be connected or failed to do repairs as a result of a disaster or an emergency. As I said, for the most part, and I would assume for many, many years to come, the local distribution companies will be the current municipal electrical utilities. The indication we have from almost all 275 of them is that they want to continue to be in the distribution business, and they do a very good job in this province.

1030

Mr Lessard: One of the concerns I've expressed and our caucus has expressed is with respect to privatization. We've seen the appointment of Sir Graham Day, whom we've referred to as a serial privatizer, from Great Britain. We've seen the contract of the chief executive officer of Ontario Hydro refer specifically to privatization. We heard this morning from the presenter from the Ministry of Finance that there is an encouragement of strategic partnerships and other methods of providing financing for Ontario Hydro and that there are no restrictions on privatization of Ontario Hydro in Bill 35 whatsoever.

What guarantees are there, if any other than your own assurance, that this isn't the direction that your government and Ontario Hydro are taking, leading us to the privatization of Ontario Hydro?

Hon Mr Wilson: I would just reiterate for you what the government's position has been since the release of the white paper last November, and that is that we're very much in favour of public-private partnerships. But at this time, to be quite frank, Ontario Hydro is a badly devalued company. Nobody in their right mind would bring that company to the private sector at this point in time. My opinion is that it needs a number of years to get its house in order and to increase its value and to improve its management and operations. Certainly each and every one of us in this room and all Ontarians are the shareholders and we're not interested in a fire sale of Ontario Hydro at this time. That's what it would equate to, I think. Mr Kwinter probably would agree that you do not go to market with a badly devalued company.

Secondly, I would say that most of the talk about public-private partnerships, frankly, has come from the Power Workers' Union. They're the ones who took out the full-page ads and the radio ads and others to urge the government to move forward. I think they see the writing on the wall in terms of understanding, as most Ontarians do, that the status quo is simply not an option. Hydro rates have gone up some 50% over the past 10 or 15 years in this province. We're now the third highest in Canada. In the 1960s and 1970s, when we attracted the major manufacturing industries to this province, we had extremely low hydro rates. In fact, we used to have the most competitive rates in Canada and, as I said, now we're the third highest.

This bill is all about putting in a regime that gives us the best possible guarantee of lower rates, introducing competition, giving customers choice, and allowing for the first time those who produce environmentally friendly forms of electricity, green power, an opportunity to actually sell that power on the power grid to willing customers, something they haven't been able to do for the last 100 years in this province.

Mr Lessard: I can't let it go unnoticed that a big part of the rate increases were the result of the mismanaged construction of the Darlington nuclear power facility that increased Ontario Hydro's debt substantially and that it was the New Democratic government that actually froze rates in the early 1990s and it was the PC government that built Darlington.

My final question has to deal with environmental protection. The bill provides the ability for the government to pass regulations to protect the environment. It says "may." It doesn't say that the government "shall" pass regulations ensuring that there's environmental protection.

You know, Minister, that the air quality in the Windsor and southwestern Ontario area is a major concern. We've heard that up to 1,800 people die each year as a result of bad air in the province, and we don't want to see cheap Ohio Valley coal-generated power being transported into Ontario and all we end up with is the bad air. We would like to see a commitment from you that a certain percentage of renewable energy sources is required by the Independent Market Operator.

I would also like to draw your attention to section 147 that says, notwithstanding the fact that other legislation may have environmental protections or regulations may be passed that require the environment be taken into consideration, that section of the bill gives the government the opportunity or the ability to override any of those regulations or legislation. I'm asking for your commitment today to ensure that any protections for the environment that you pass through regulations aren't going to be overridden by this section of the bill.

Hon Mr Wilson: That section of the bill is there because the lawyers put it there.

Mr Lessard: Take it easy on the lawyers.

Hon Mr Wilson: It's a carry-over from the current legislation and it gives the government the ability to do exactly what you're asking, and that is to be extremely tough on the emissions. Ontario Hydro has a tremendous record of meeting both its statutory and its voluntary emission targets, which are some of the toughest in the world.

This bill is good for the environment. The vision of Ontario Hydro and its successor companies will be to be a major player in the North American market, and rather than burning dirty coal in the States, of which most of that air seems to end up here with our neighbouring states to the south of us, after NAOP is successful and all of the nuclear reactors come back on-line, or we hope eventually all of them come back on-line, that's clean power. When we take over a major part of the northeastern United States market, we'll be shipping clean power into the

United States, and it's a real marketing advantage. We already know that.

Also, as I said, for the first time people will have choice. Customers will have choice. In the United States, without legislation in many states, customers are exercising the choice to purchase green power. They're willing to pay half a cent or a cent a kilowatt hour more and they are exercising that choice.

We will do our best and I hope all legislators will do their best to promote those options. We know that marketers will come to your door and probably ring your phone a few times, beginning in the year 2000 when competition begins, and they will be offering portfolios, packages of electricity. They will probably come to you and say, "Do you want 20% of your electricity to be generated through a green source and another part through nuclear and other sources of hydroelectric power, other sources of generating electricity?" That's what's happening in other jurisdictions.

Finally, I'd like to say that there's nothing in Bill 35 that in any way dilutes any of the statutory requirements that Ontario Hydro has today. The Ontario Energy Board and the Independent Market Operator, but more specifically the Ontario Energy Board, won't grant a licence to anybody in this province unless it meets the very, very tough environmental standards we have. Again with customer choice and with the ability now to sell green power because all of the hydro lines in the province become common carriers as our gas lines and our telephone lines are now, people who produce green power will actually be able to sell it to customers and we expect many customers will avail themselves of that opportunity.

Could I just say too, in every single speech I've ever given, which is well over a hundred on this, we have always said that the emissions or the way in which your power is generated will appear on consumers' bills in the future. That's always been part and parcel of this legislation. The Sierra Club had a press conference last week or the week before and called on the government to do that.

I just want to say as respectfully as possible that has always been the policy since we held the first press conference on the white paper last November. Customers for the first time will be able to see on their bill the types of emissions, the amount of emissions that were incurred for the production of their electricity. I think, as the years go on, we're going to have even more informed consumers and environmentally conscious customers in the electricity sector.

The Chair: Thank you. To the government caucus, beginning with Dr Galt, followed by Mr Hastings.

1040

Mr Doug Galt (Northumberland): Thank you, Minister, for the presentation and the thoughtful comments. I'd like to start by exploring some of the last comments and the question by Mr Lessard in the area of environment. Certainly environment's very close to my heart and of great concern. I'm very pleased to read some of the performance of Ontario Hydro in the past. It produces

some of the cleanest power in North America, if not the cleanest power in North America.

You've made a couple of references in your speech: one, in the beginning, about being more environmentally friendly, and two, near the end, talking about strong environmental protection measures. However, just recently reading in the paper, on August 5 in the *Globe and Mail*, John Bennett, director of atmosphere and energy activities with the Sierra Club, and — I also looked at the *Hamilton Spectator* — Elizabeth May, the executive director, were sort of slamming the bill about the environmental aspects and where that may go, and it goes on to Greenpeace with Kevin Jardine talking about the bill and the problems with the environment and their concerns.

I have similar concerns that our environment will be protected, Minister. How do you see some of these things being posed in the press recently as being in any conflict with our bill? Are they justified in the criticism that they're levelling against the bill of our government?

Hon Mr Wilson: I appreciate the question because they're actually, for those who attended the press conference, not criticizing the government. I've met with the Sierra Club. When the white paper was introduced in November, I think we had an unprecedented consensus in the province. We not only had unions and management, large and small industries and the Consumers' Association of Canada, but we also had the environmental groups lining up onside and very much encouraging us to move forward with the type of legislation that you have under consideration, Bill 35.

The misunderstanding comes from — I suppose electricity speeches aren't the most exciting thing in the world, Dr Galt; we don't get a lot of press at my speeches and the word may not have gone out that we were going to put on the customer's bills, make sure they're well informed on the way in which their electricity is generated in the future, which is a vast improvement over today. I don't want to be critical at all of the Sierra Club; they've been very supportive.

We have environmentalists on the Market Design Committee. They have a very effective environmental committee. They have met with all of the major environmental groups in the province. The Market Design Committee is chaired by Professor Ron Daniels, dean of law at the University of Toronto. They've done an exceptional job, and we look forward to their next report where they'll have more recommendations on how we can better protect the environment.

I look forward to hearing from presenters who appear before this committee also because, as Mr Lessard pointed out, there are a lot of regulations to be written and many of the environmental measures will be contained in regulations. Any way you slice it, Bill 35 is a vast improvement over the current situation in terms of protecting the environment. In fact, I think, as Mr Sterling said in the House on one of the last days before the session ended, it's the most significant environmental measure that this government has taken or that any government has taken in many decades in this province.

Mr Galt: It's my understanding that currently the Minister of the Environment is having consultation sessions and inviting environmental groups to be part and parcel of the decision-making on the regulations that will be on the Environmental Bill Of Rights registry down the road for all kinds of input by environmental groups. Just to query you for a moment — you were talking about environmentalists and environmental groups being on various committees — could you elaborate on the committees that they're involved in and the decision-making in this process?

Hon Mr Wilson: I'm going to ask the assistant deputy minister, Les Horswill, to give the titles of the gentlemen who are on our committees. As I referred to in my remarks, environmental groups are represented both on the Minister's Electricity Transition Committee and on the Market Design Committee. The assistant deputy minister wants to elaborate here.

Mr Les Horswill: On the transition committee which the minister meets with on a monthly basis is Bruce Lourie, who is well known to those involved in energy conservation and is involved with the Canadian Energy Efficiency Alliance. On the Market Design Committee has been Mitch Rothman, and the thing that's necessary to add, and you'll be hearing this afternoon from Steve Probyn, certainly — IPPSO and Steve Probyn have long been advocates of green power to customer choice. At least those three individuals, though I wouldn't suggest any other members on those committees are uninterested in making sure there's a clean structure —

Mr Galt: If I can just wind up my question and one more that relates to Mr Kevin Jardine's comment that coal plants in Ohio will be able to sell electricity into Ontario and we'll have to live with all of that air pollution because it will drift right over here, what is the intent to try and stop that kind of activity? It's a very disturbing comment to read in the press. I can't agree with it, but I'd just like to hear your comments on how we're going to control the extra precursors to ozone coming across Lake Erie, Lake Huron etc.

Hon Mr Wilson: The Ministry of the Environment is advising us, and they are still doing consultations. In fact, many of the environmental representatives who will appear before you — and I hope everybody's an environmentalist, by the way.

Mr Galt: Absolutely.

Hon Mr Wilson: It might be appropriate to ask those representing certain associations their involvement in the process with the Ministry of the Environment, because I think it's been fairly extensive.

Our objective in a competitive market is to level the playing field. We are looking for regulation that ensures that people can't dump dirty hydro into this province. Currently they can. Bill 35 gives us the teeth to ensure there is a level playing field. We certainly do not want cheap, dirty electricity coming into Ontario and unfairly competing with our own companies, in particular Genco, for example, and we will absolutely ensure that the rules are fairly applied to all. They won't get a licence to sell

electricity into this province if it doesn't meet our environmental standards.

That's the goal. As you know, it's easy to say that; it's a rather complicated thing to put into law and to put into practice. Again, we buy hydro from the United States every day in this province to meet peak demand, and those securities are not in place in law today. We'll be looking to this committee and others to help us draft the regulations to ensure that those who want to sell electricity into this province meet our environmental standards.

Mr Galt: I think there are two points that have come out of this discussion. One, pre-Bill 35 we are able to purchase or have dumped into Ontario dirty hydro; two, up until now it has really not been possible to put green power on to the grid. I think those are two very interesting points that you've brought forward.

1050

Mr John Hastings (Etobicoke-Rexdale): Minister Wilson, there's a New York Democrat for Congress, Charles Schumer, who is running to try and replace Republican Senator D'Amato in the upcoming senatorial elections this fall. The key, fundamental platform plank in his campaign is considerably reduced rates for the New York Power Authority.

I'd like to know from your own discussions with all these groups you've been meeting with — the independent power producers, the large power producers, the local electrical utilities, the automotive sector, agrifood, retailing, anybody who has to buy power from monopolistic Ontario Hydro right now must be telling us what are the missed opportunities in terms of jobs that we're not retaining and jobs that we ought to be attempting to create out of this whole mix in terms of the breakup of the monopoly. I'd like to know what would be a very conservative estimate of jobs in some of those sectors and in the others you may have looked at where we're losing jobs, and where we need to make these fundamental market reforms for creating some jobs.

Hon Mr Wilson: It's a very good question. We have a \$10-billion electricity industry right now in the province. We conservatively estimate that over the next 10 to 15 years we will see \$10 billion to \$12 billion worth of new investment in the sector. Much of that is to modernize the electricity grid itself in the province. I think you'll see new interconnects between not only our neighbouring provinces, but between ourselves and the United States, so there will be an upgrading of the wire infrastructure in the province.

We expect that a tremendous amount of that \$10 billion to \$12 billion will be in the generation business. TransAlta, as you know, one of Canada's very large energy companies, has already announced and proposes to build a \$400-million cogeneration plant in Sarnia. When you appear in Sarnia I think you'll find that the people of Sarnia, the small businesses on the main street, are extremely excited about this legislation. In fact, that day that we're in Sarnia, I'll be speaking to the chamber of commerce at their invitation because they're very optimistic. That type of investment, \$400 million signalled

already by TransAlta, is unprecedented. I think that would be the largest or the second largest cogeneration project this country has ever seen, and we expect to see more of it.

It's also good for the environment. They're using high-efficiency gas to generate the electricity. That's certainly better than coal and other fossil fuels.

We have a standard formula, which the assistant deputy minister and I can't remember at the moment, in terms of what \$10 billion or \$12 billion means in jobs. In the United States already we've seen a tripling of the number of jobs in the energy sector since many of those states began to introduce competition over the last few years. Mind you, many of those jobs are on the marketing side, but there have also been significant numbers of new employment in the generation, distribution and retailing business.

The Chair: We'll move to the official opposition, Mr Conway.

Mr Conway: Thank you very much, Madam Chair. I want to share some of the time with my colleagues Mr Kwinter and Mr Phillips.

Thank you, Minister, for attending this morning. I'd like to get directly to my questions. When does the current electricity rate freeze in Ontario come to an end?

Hon Mr Wilson: At the end of the year 2000.

Mr Conway: When do you expect your competitive electricity policy to effectively begin?

Hon Mr Wilson: Sometime in the year 2000.

Mr Conway: So it is your expectation that the competitive marketplace will begin at approximately the same time as the rate freeze comes to an end?

Hon Mr Wilson: Again, the competition start date will be when we're ready, and that's sometime in the year 2000. Clearly the government's policy is that the freeze remains in effect until the end of the year 2000. The competitive market will take a while to develop, though. It will take a while to evolve, probably a number of years.

Mr Conway: Are you prepared as minister today to commit to extending the rate freeze beyond the year 2000?

Hon Mr Wilson: Our hope is for lower prices, and all indications are that there will be lower prices.

We know a couple of things. All moneys coming in to government in the future in this sector will go towards paying down the debt. Every dollar we save there will help to lower consumers' electricity bills. Secondly, I haven't talked to any of the 275 municipal electrical utilities that are in amalgamation discussions around the province — they're doing those amalgamations because they are achieving cost savings, and they are passing those savings on to their customers.

So in those two areas alone, we expect to see prices lower. They have to go lower. We're out of whack with our competitors. Ontario Hydro's prices have gone unchecked for far too long, and a competitive market will bring some discipline to those prices.

Mr Conway: Minister, I think all of the committee shares that hope and expectation, and I share the view about competition. I support key ingredients of this policy. But the devil will be in the details. Thanks to your Market

Design Committee, we have now before us some very specific, telling evidence about what has actually happened in places like England and Wales and New York and California and Argentina and Australia.

It is with that in mind that I ask you today, what specific guarantees are you prepared to give to the residential and farm consumers of electricity in Simcoe county or in Renfrew county that in the period between 2000 and 2005 their residential and farm rates will not go up beyond what they were paying at the beginning of the competitive marketplace in mid to late 2000?

Hon Mr Wilson: In places like New South Wales in Australia, England, California, because they dickered around for a decade, the government finally gave a 10% across-the-board cut, because they knew prices would go even lower than 10%, so it was very safe for the government, in hindsight almost, to legislate that 10% cut. Prices have fallen anywhere between 8% and 40% around the world. We have no experience at all of prices going up. I guess my best guarantee is to review the history around the world that shows that competitive markets bring lower prices.

Mr Conway: I'd like to then turn to that. I accept what you and Mr Dorey said about the expectation that there will be savings on the distribution side. Absolutely. That's a given. But as you yourself a moment ago said, 70% or more of the average electricity bill has to do with generation. That is the single biggest item.

Minister, it has struck some of us, me particularly, that you, in developing this policy that is contained in Bill 35, chose to ignore critical advice you received from the Macdonald committee in May 1996 and you have ignored advice tendered from the Market Design Committee, namely, that if we are going to get significant benefits from competition, we as a Legislature and we as a province, Ontario, must deal with the fact that as we head into this competitive marketplace, Ontario Hydro has a massive market presence of approximately 90%.

So my question is, why did you choose to ignore the advice of the Macdonald committee and of your own Market Design Committee and not break up Genco's massive market power beyond the very limited breakup that is contemplated with just the two companies, Genco and Servco? How is that going to help produce the lower rates we all want, particularly for residential and farm customers in places like Simcoe and Renfrew county?

Hon Mr Wilson: With all respect, Mr Conway, the Market Design Committee's report does not recommend to the government breakup of Ontario Hydro further than what's contemplated by the government. The part that you quoted from in the first hour this morning is the early pages of that report in which it talks about one of the ways to deal with market power being to divide the entities. It goes on, though, as I think Mrs Johns pointed out after your comments this morning, to post a menu of other ways to deal with market power.

It reeks with confidence, the entire report — and Professor Daniels himself in presenting the report to me, and the unanimity of the Market Design Committee and

the experts advising them and us — that it's very possible to deal with the issue of market power without further breaking up Ontario Hydro.

1100

We're not interested in further devaluing Ontario Hydro. It needs to be a very strong entity in order to beat the Americans in the electricity market. We expect the successor company to Ontario Hydro, Genco, to be one of the 12 to 15 major power producers on the North American continent. The United States, as you know, right now is likely to divide up into about 12 or 15 major power generators with all the amalgamations that are going on. These are huge power companies. You can't go in there with a thin stick. You need a very strong, very healthy company.

Ontario Hydro will have to give up probably in the range of 40% of its domestic market share here in Ontario in order to level the playing field and to allow new entrants to generate electricity in this province and to ensure that we have a competitive market. They owe it to us, the shareholders, each and every Ontarian, to replace that market share with new business in the United States and elsewhere. That is their vision and that is what the new people at Ontario Hydro and its board are aiming to do.

The decision was taken to try and have a very healthy and a very large generating company, a very diligent and very strong Independent Electricity Market Operator and the Ontario Energy Board to ensure that there isn't gaming in the system, to ensure that there isn't abuse of market power, and that's what the bill before you does. It contains a menu of ways of dealing with market power. It brings new tools to the new marketplace for the regulator, like the Ontario Energy Board and the market surveillance panel of the Independent Electricity Market Operator to use as hammers, if you will, if there is any abuse of market power in the system.

But you and I own Ontario Hydro and we want it to succeed. At the same time, we need to introduce a competitive market in Ontario. We can only do that if Ontario Hydro succeeds with its plans to enter the North American marketplace in a big way.

Mr Conway: Minister, what do you believe the stranded debt of Ontario Hydro to be today?

Hon Mr Wilson: I don't know. We're waiting for —

Mr Conway: I accept that you don't know. When do you expect to know?

Hon Mr Wilson: Later in the fall. We need to know sooner rather than later I think is where you're going, Mr Conway —

Mr Conway: I understand that.

Hon Mr Wilson: — in order to, as Mr Dorey I'm sure must have explained this morning —

Mr Conway: But later this fall — my time is limited. I want to make the point that Mr Dorey doesn't know till later this fall and you don't know till later this fall. The committee has to know. The people of Ontario surely have to have some details around this multi-billion dollar calculation before this committee, as a trustee for the

public interest, can make some determination as to the efficacy and the appropriateness of some very important rate-related decisions that we will make. How can this committee proceed to deal with this bill without having that information?

Surely, Minister, we're being asked as a committee to sign a mortgage on behalf of the electricity ratepayers in this province without knowing what the interest rate is and without knowing what the period of amortization is. How is it that the public can be well served by at this late date not having any specific idea as to what that stranded debt's going to be and how precisely it is going to be equitably apportioned across all rate classes? This has to be a very important question for all fair-minded people.

Hon Mr Wilson: Could I just say in fairness to Ontario Hydro that not only have we had the rate freeze in place since this government came to office in 1995, and that will continue to the year 2000, but Ontario Hydro has never missed a debt payment and it continues to pay down its debt. As we speak, debt is going down. We've not added a penny of new borrowing as a cabinet since coming to office in 1995. As you know, all significant new expenditures would have to be approved by cabinet and this cabinet has not added to Ontario Hydro's debt in any way.

Also, we would all like to know exactly what the stranded debt or the residual debt is, but it isn't, if I may say so with respect, a figure you necessarily need to know to deal with Bill 35. It would be nice to know. I think we are familiar with the ranges that are out there, but the actual legislation before you doesn't need a figure on stranded debt to be dealt with. What it does say is that the debt will continue to be dealt with in a transparent and fair manner and, yes, it will be apportioned across the successor companies. For the first time the government's committing that all moneys coming in through corporate taxes, payments in lieu, will go aggressively towards paying down that debt.

Bill 35 is a debt reduction bill and it ties the government's hands to ensuring that every penny of revenue coming in in the future in the electricity sector to the government of Ontario goes aggressively towards paying down that debt. That's good news for prices and good news for customers.

Mr Gerry Phillips (Scarborough-Agincourt): I fundamentally disagree with you. We need the numbers. I just cannot believe you would say that. We're dealing with a bill that will make fortunes for people in this province and could potentially leave the taxpayers with huge bills. I say to you, Minister, we do need the information. I assume it's a very quick question. We need the stranded debt information before we approve this bill. Will you undertake to give us that? You have indicated today that you expect Ontario Hydro will lose 40% of the market and will sell that electricity into the US. Will you give us the studies you've done that prove that those generating plants will be competitive under some reasonable assumptions on how you're going to assume stranded debt? You've indicated that Ontario Hydro is paying

down debt. I see that in the last two years Ontario Hydro has lost a total of roughly \$8 billion. The debt has been barely paid down at all and there's no indication on the Hydro books that they can service and pay down the debt on existing rates.

I'm saying to you that we need the information. Rhetoric and your hundred speeches are all very nice and good but we want to make decisions on the basis of facts. Will you undertake to give us those facts before this bill is approved?

Hon Mr Wilson: I'm very hopeful that finance will have that information available by the time legislators vote on the final version of this bill, which, if all goes well, I expect would be in October, given that the House is coming back in late September, I believe. We certainly want the information ourselves at that point.

Let's not leave the impression out that Ontario Hydro has missed any bill payments; 30% to 40% of the cost of Hydro coming into your home today is debt servicing. This bill doesn't add any new debt. In fact, it sets up an aggressive regime to pay down debt, which is a direction, frankly, that previous governments should have taken and should have done sooner rather than later. However, we are dealing with it in this legislation.

At current Ontario Hydro prices, there's no problem paying off their statutory debt obligation.

Mr Phillips: Give us the information.

Hon Mr Wilson: It's given that prices are expected to go down, which is why finance is out discussing with everybody that has an opinion on this. It's very difficult to guess what the new low prices are going to be; therefore it's very difficult to put a figure on.

I think Mr Dorey probably explained that the litmus test will be after the successor companies are set up, when they go to the markets for a credit rating. That's when we'll know whether we've pegged the residual stranded debt at a proper figure. As I said, we expect to hear from these hearings more information that will be helpful in pegging that number.

I can't think of a more transparent process, though, with Dr Bryne Purchase, the former chief economist of the province.

Mr Phillips: Will you file the information?

Hon Mr Wilson: He has consulted with everyone, including yourselves, all political parties.

Mr Phillips: Will you file the information, though, Minister?

Hon Mr Wilson: There is a paper available that was just published, as you know, by finance.

Mr Phillips: I asked you for three specific pieces of information. Will you provide those?

Hon Mr Wilson: I'll be happy to present that paper to you.

Mr Phillips: No, will you answer the three questions?

The Chair: Minister, we're just out of time, if you would just wrap up, please.

Hon Mr Wilson: Every step that's been taken to date and everything that we know to date is in the paper that the Ministry of Finance released last month. We look

forward to people's comments. Again, we're all eager to know the final figure and we'll have that just as soon as humanly possible.

The Chair: With that, Minister, we thank you very much for taking the time to come before the committee this morning. We will, as you wish, seek public comments on this bill.

1110

ENCORE ENERGY SOLUTIONS

The Chair: Our next presenters this morning are representatives from Encore Energy Solutions. Welcome. Please make yourself comfortable and introduce yourself, your position and your colleagues as well. The time allotted for your presentation is 30 minutes. You may use that in any way you wish, either all for presentation or you may leave time for questions from caucuses.

Mr Martin Merritt: Good morning, Madam Chair, and thank you for having us. It's a pleasure to be back here in my hometown. My name is Martin Merritt. I'm the director of portfolio management and trading for Encore Energy. We are a Canadian company based in Calgary, Alberta, and have been working actively in deregulated electricity markets in Alberta, in California and most recently here in Ontario, and look forward to doing more of the same.

I will be making the presentation, although I'd like to acknowledge my colleagues who will be available to answer questions following the presentation: Bruce Sharp, who is our manager of power services and is based in Cambridge, Ontario, just west of here; and the general manager of our business, Paul McMillan, who is based in Calgary with me.

I see we have a handout coming around. Are we going to plan to speak then to the paper handouts rather than any other audio-visual?

The Chair: No, as you wish. Do you have slides?

Mr Merritt: I do, but I'm quite happy, if there are enough handouts to go around, just to speak to the paper that's in front of everyone.

The Chair: It might be easier. OK.

Mr Merritt: Let me just start by adding a little bit to my own background and then I'd like to introduce our company.

As I said, my name is Martin Merritt. I'm a mathematician by background. I went to school just west of here in Waterloo, Ontario, and have spent pretty well all of my 20-year career in the energy commodities industry, based mostly in Calgary, and specifically in the last three and a half years focused on electricity in North America's first deregulating markets, Alberta and California, and in the last year focusing here on Ontario with the expectation that there will be opportunity here.

The business I work for and for which I'm the director of portfolio management and trading is a three-product-line business. We are engaged in the business of portfolio and risk management. That involves consulting, training and outsourcing services to electric utility companies both municipally and investor-owned in deregulating markets.

Our power services business is focused on end-use consumers from the medium to the large size, and providing them with consulting services and commodity products and trading, which is essentially a manage-risk-for-profit kind of business not unlike foreign currency trading or interest rate trading or other energy complex trading.

As I indicated, we're active in Alberta, California and making initial forays here into the Ontario market.

We'll flip to the second slide. Just to give the committee some advance description of where we're going to go here, I only have six slides. I would like to cover the high spots and provide at least half of the time that is allocated for questions. You can feel free to interject if you wish or save them to the end, whatever is your pleasure.

Our experience has been that competition always, always leads to lower prices. We have seen that in the natural gas industry, which deregulated beginning in November 1985, in the airline industry, and most recently in the telecommunications industry. It offers much greater choice to consumers than monopoly providers will ever make available, new products and services, and a fundamental redistribution of risks. We'll talk a little bit about that later because that does create some issues.

I think it's appropriate to set my remarks off in that context, that it is our expectation, based on experience, that competition will lead to lower prices, greater choice and new products and services. There is absolutely no doubt about that or we would not be here.

The structure that follows is that I would like to recap some of the lessons we have learned in Alberta and California, and then offer some opinion on what we have read from the Ontario Market Design Committee and offer opinions about what we believe will and will not work from among the recommendations that are on the table now.

To recap, Alberta wholesale competition, as you heard earlier today, has lowered prices. There is absolutely no doubt about that. In 1994 and 1995, prior to the opening of wholesale competition in Alberta, prices were averaging — the marginal costs; this is excluding the fixed costs — in the \$17 per megawatt hour range, and in the first year that wholesale competition opened up, they dropped to \$14.50.

As you may know, Alberta's economy has been booming for the last couple of years. A record load growth has eaten up the supply overhang that regulated markets inevitably build. That has improved the efficiency of the total system, but as we have eaten up that supply overhang, prices have now begun to rise. They will be abated when new generation comes on line. Unfortunately, the delay to contemporaneously introduce retail competition in Alberta has been a major mistake and market power remains a problem in Alberta. The fix has been passed in legislation now and will have effect over the next three years.

The end result in Alberta is that because the government made the choice to deregulate the wholesale and retail markets separately, with the wholesale preceding,

the benefits of competition did not flow down to consumers. Municipal utilities by and large enjoyed the initial windfalls of wholesale competition, but were not forced to flow those benefits through to retail customers, and so the benefits, while they were there in theory, remained trapped with the MEUs.

Now that those benefits have remained trapped with the MEUs, new generation has not been incented, prices are beginning to rise and volatility is beginning to rise. The MEUs, which naturally were advocates of wholesale competition but not retail competition, are now facing volatility risks that they have neither the skill, appetite nor mandate to manage.

Finally, without access to end-use customers and reservations about the fairness of the market, no significant new generation is under construction. So I think Alberta was initially on the right track. The major shortfall in their strategy was to not open up the retail market at the same time they opened up the wholesale market, and they did not deal well with the issue of market power despite knowing full well that it was going to be an issue.

1120

Let me just recap a little bit about the California experience, and then I'd like to contrast that with what we see on the table for Ontario. Alberta, like Ontario, made the decision not to force divestment. It was a practical, political and fairness decision. California did not go down that path; in fact they did force divestment, so there was a little more heavy-handed approach to how they were going to undertake deregulation. I think that's well documented in the Market Design Committee's reports.

One lesson they learned was that they simultaneously opened the wholesale and retail markets for competition. They did that despite the naysayers who said the lights would go out if you tried to undertake something so ambitious. They pulled the switch this March 31 past and the lights did indeed stay on. Their power pool has actually exhibited some hours where the price has been zero, if you can believe it.

The point I'd like to make about California's experience, and it will follow on some questions I heard earlier today, is that they had very strong consumer protection components in their legislation, virtually mandating 10% price reductions. In fact, the protections for consumers were so strong that it has been impossible for new retailers to make any money. This overzealous commitment undoubtedly felt good at the time the legislators made it and it has undoubtedly generated short-run benefits for consumers, but at the expense of ruining the competitive environment that is necessary to generate the long-run objectives the legislation had for them. We've had a major marketer pull out of California already, and I would imagine that the legislators are rethinking that aspect of it. Competition is good, and certainly consumers who have paid the freight to date in a regulated environment ought to benefit from the assets they have caused to be put in place, but it's possible to get so overzealous with the commitments that you ruin the

competitive market that's designed to generate the long-term benefits. I think that's one of the key lessons from the California experience.

Let me just comment a little bit on the market design we have on the table here now. First off, I cannot emphasize strongly enough that the fundamental goals and sense of urgency that you have are well founded. You are sufficiently back from what I would call the bleeding edge to have had the benefit of learning from the mistakes that were made in Alberta and California, but you are well ahead of the vast majority of jurisdictions in North America which are considering deregulating their electricity environments.

I think the OMDC has been successful and to a large extent the government has been successful at taking their advice in embracing the key design elements that have been proven elsewhere and avoiding the ones which have not worked elsewhere. Specifically, there is the creation of a pool market with the ability to do some bilateral transactions overlaid on top of that. The creation of an independent market operator is absolutely necessary and I think has been proven in every market worldwide that has gone this route. It's natural to retain both the transmission, the high voltage and the distribution wires as to regulated monopoly. That's a road most other jurisdictions, or all others that I know of, have taken and I think that's a wise and obvious choice, frankly.

Simultaneous wholesale and retail competition: Despite the fact that it takes longer to do it and it's more complicated, it is absolutely, positively the only way to do it. I think Alberta and California are the only two jurisdictions you need to look at to realize that's the way it has to be. There is no other way to flow benefits to end-use consumers other than to open them up to competition simultaneously. There is no other way you're going to attract new investment and cause people to build generators if they don't have access to end-use customers.

Lastly, the potential for congestion pricing: The whole model of congestion pricing has been well developed in California and I think it's a wise choice for a province as geographically and industrially disparate as Ontario.

In summary — and I am going to talk about some reservations I have on the next slide — our high-level comment on the OMDC's work and Bill 35 is that the current proposal is well positioned to create a three-way win: for consumers, for shareholders and for taxpayers. You're very fortunate indeed here in Ontario that shareholders, consumers and taxpayers are virtually one and the same, which is not the case in very many jurisdictions. In some respects it makes the difficult decisions you have to make around stranded debt quite a bit easier than they would be otherwise, because it's a question of deciding which hat the same person will be wearing when he takes the hit for past mistakes. Let me just focus a little bit on some of the outstanding challenges that I see for you.

I am not going to comment on the practical or political wisdom specifically of the choice to not break up Ontario Hydro. Let me say this, though: It is a very, very difficult problem and absolutely fundamental that the issue of

market power be solved and be seen to be solved by all would-be participants in this marketplace.

The bag of solutions that has been put on the table I think in principle is feasible. The proof, however, will remain in the pudding and the devil will be in the detail. Addressing the issue is absolutely key if we're going to harvest the benefits that competition promises and if we're going to attract new investment.

We have quite a kit bag of tools that the OMDC has advocated. Some of the tools are conceptually similar to the fix Alberta legislated this past spring and which will take effect over the next three years. At a minimum, you've avoided the first round of ill-advised designs that Alberta went through and you've jumped right to the second step. I have to say I'm confident that Alberta's recently legislated fixes will work. I am disappointed they're going to take three years to be implemented, but obviously I have to be equally confident that you've latched on to the mark 2 version that took Alberta one extra go-around to get sorted out.

There is a large array of tools available and I think the OEB and the legislators and other market participants are going to have to be very on the ball about using that entire kit bag of tools to solve the problem, given that divestment has been ruled out.

Credit risk: An unregulated market will fundamentally redistribute risk, in particular credit risk. Right now the risk that I do not pay my electricity bill is not borne by my neighbour. It's borne exclusively by me because my municipality by and large has the right to add my unpaid bill to my taxes and collect it if and when my property is ever sold.

In the future the risk that I don't pay my bill is going to be borne by all of us and my neighbours in much the same way that the cost of shoplifting is borne by all shoppers.

The market design report deals with — I heard some questions earlier this morning dealing with the risk LDCs will have in dealing with me as a private marketing company, but I don't see very much written on how I am going to deal with the risk that my customer doesn't pay his bill, given that I do not have the same prerogatives to add it to the tax bill that the municipality which was previously serving that customer might have. Frankly, that's going to cost money in much the same way that a store has to add a little bit to all of its merchandise to pay for the stuff that walks through the door unpaid for. It's a small point, but it's one that we have to recognize will be a factor in an unregulated market.

The meter monopoly: We are directionally very supportive of the idea that meters ought to be a competitively procured and installed service. We are a little disappointed to see an artificial cut-off on the size of consumer that ought to be allowed to have XYZ company come and install their meter. The 50-kilowatt cut-off that is proposed right now perhaps make sense based on the current economics of meters today, but let's not preclude the creativity of meter manufacturers. If a \$10 Internet-readable meter were to be invented tomorrow it would reinvent the way in which the retail business could work.

Rather than regulate or legislate artificial cut-offs on where the meter business will be competitive, our advice to you would be to let technology move at whatever pace it's capable of moving at and allow the meters to be competitive. It's quite clear that as a homeowner I'm not going to spend \$500 on a meter, but if a \$50 one comes out next week I might. Let's not preclude the possibility. Our advice would be to reduce the artificial ceiling on the portion of the market that has to procure meter services from their LDC.

1130

Lastly, I'd like to comment on what I'll call derivative paranoia. It's a very unfortunate word and I think it would be nice if we could somehow eradicate it from our vernacular and invent some other word, but it does tend to come with a lot of baggage.

Financial instruments — let me call derivatives that, which they more appropriately are termed — are a natural by-product of unregulated markets in much the same way that automobile insurance was a natural by-product of a growing number of automobiles in the early part of the century. With the faster speed and the greater potential to hurt people, insurance was a natural by-product of that phenom.

Financial instruments for managing the price risk associated with a volatile commodity market are a very natural evolution. The risk that is created by derivatives is not so much inherent in the tools themselves as it is in the price fluctuations that are created by the exercise of market power by a dominant player. There are necessary elements, by whatever name we call them. I realize it's not part of the legislation but I would just encourage us not to spend a lot of time trying to stickhandle around derivatives or pretend that they aren't there or create nomenclature exercises that make them appear to not be necessary. They are a natural by-product of a market and all players in the market will learn how to use them over time.

That's probably it for prepared remarks. We'd be very happy to answer any questions you may have.

The Chair: That leaves us with just about three minutes for questions from each caucus. We'll begin with the government caucus.

Mrs Johns: Thank you for being here with us today. We certainly appreciate it. I'm sure that like many of my colleagues here I've been out with a number of my PUCs and MEUs, talking to them about what they think of the bill. I was surprised by your remarks about derailing retail competition. I know the government spent a great deal of time thinking about whether we should move forward at the same time with wholesale-retail or whether we should go other ways. You seem pleased with the decision that was made.

You made a comment about the MEUs and how they made windfall profits as a result of this in other areas. Can you explain that to us a little bit so we can understand where they're coming from when they make this kind of presentation to us?

Mr Merritt: Sure. Among the strongest advocates for a two-stage evolution in Alberta were the MEUs, for the simple reason that an MEU is an organization that by definition feels that competition is good for their suppliers but not for their customers. They know that competition will lower their costs but they're very loath to flow the reduced costs to their customers. So they have all manner of arguments why their suppliers ought to compete for their business but why other people ought not to compete for their customers. The only way to meet the government's objective of flowing the benefits through to customers is to simultaneously open the retail competition when the wholesale opens.

Mrs Johns: Their argument would be that it's happening way too fast and that there are going to be all sorts of fallout as a result of that. Do you buy that argument?

Mr Merritt: Not a bit. We've seen this in California, and mercifully the Legislature there had the wherewithal to put up with the noise and go ahead, and indeed the lights stayed on. But the basic thrust of the arguments that municipalities use to thwart progress is what I'll call "orderly transition." They have all manner of orderly transition types of arguments but at the end of the day the two-stage implementation in Alberta caused problems; the one-stage implementation in California introduced real competition and indeed the lights stayed on. I rest my case.

Mrs Johns: Your premise when you started here was that the prices were going to go down. You said competition did that. My colleague across the way has been pushing the government — well, pushing the minister or the last two — to suggest that there should be some cap on pricing or to set a level of pricing because of concern, as we all should be concerned, about the consumer. What confidence can you give us that the price will go down and that we have done the right thing in the bill by moving forward and not putting a cap on pricing?

Mr Merritt: In California they tried to legislate the savings and at the end all they did was scare away the people who were going to come into the market to generate the long-run savings. Certainly price caps, bid caps are tools that the OMDC have put on the table as possibles, and I wouldn't rule those out. I would be reluctant to entrench them in legislation. People's willingness to invest and come into this market is going to be based on their perception of how it will work, and I think legislation is a pretty heavy-handed way. I think you have to have confidence that the supply-and-demand balance, the new generation and the creativity of the private sector are going to push prices down. If you try to legislate what you believe will happen, I think all you're going to do is prevent the goose that will lay the golden egg from coming into the market in the first place.

Mrs Johns: One of the concerns we had when we were doing this was the metering. What we didn't want to have was seven meters on a person's house. We didn't want people to be changing meters and flipping quickly. What will stop that from happening? Why do you say that we should just allow this to open up?

Mr Merritt: It's not a question of having seven meters on a house. It's just a question of allowing whether or not

my meter will be provided and installed by Toronto Hydro or ABC Co. There will only be one meter, there's no question about that, and it needs to be a revenue-approved meter so it's technologically sound. The issue of who owns the meter needs to be the subject of competitive forces.

Mr Monte Kwinter (Wilson Heights): Mr Merritt, let me talk to you about competition. My definition of competition is unfettered competition. You produce a product and you sell it at the cheapest price at which you think you can continue to stay in business.

We have a situation where in Ontario they talk about competition but it's a different kind of competition in that the government is saying, "Yes, you may come into our market but everything that you do will be subject to a surcharge." That surcharge in fact is going to be called a competition transition charge and that is to pay for our past problems. The other problem with that, of course, is that's open-ended. We don't know that's going to be.

We talk about stranded debt and the government is going to make payments in lieu of taxes to deal with that. But there's also the potential of stranded assets and stranded decommissioning charges on our nuclear facilities, all of which can be apportioned to everybody that comes into the market. Even the cogeneration plant that the minister talks about in Sarnia is going to be subject to that same surcharge. How do you feel that is going to impact on the desirability of outsiders to come in to compete in this market?

Mr Merritt: I don't think it will impact at all, because it's supplied across the board. The issue of whatever the figure is, \$20 billion or so in money that we wish we would not have spent, with 20-20 hindsight, that stranded debt is a fact. The issue of how to apportion that historical figure among shareholders, ratepayers and taxpayers is really a public policy decision that I'm sure the Legislature will make.

For new market entrants, the real benefit in Bill 35 relates to what we will create in the future. With whose money will the next generator be built? At whose risk will the next generator be built? What will be the price of the next megawatt of generation coming into the market to serve the Ontario load?

The objectives of the bill will be adequately served by making sure that the incremental investment and the incremental generation required to service the load is the product of a competitive environment.

The issue of how to allocate \$20 billion worth of past mistakes I think is largely an administrative one. As I said at the outset, in Ontario, because taxpayers, ratepayers and consumers or shareholders are one and the same, it's a public policy issue but it's not going to affect the way in which the next increment of generation is competed for or how it's priced. All competitors are going to have to deal with the CTC. California has the same feature in their market.

Mr Kwinter: What I'd like to do is get your comments. I agree with you that it's not going to impact on what happens in Ontario because everybody will be

subject to the same surcharge. How is it going to impact on competitive jurisdictions that don't have that debt to deal with in the way of attracting new investment of hydro users, not necessarily hydro generators?

Mr Merritt: I'm not sure I understand either the question or the concern. There's something I'm missing.

Mr Kwinter: You're saying that the hydro generators will play in the game because everybody is subject to the same rules and if there's a surcharge it applies to everybody. But that, in my feeling, is going to raise the price of generation in Ontario vis-à-vis other jurisdictions that don't have that same debt problem that they have to recoup, which means that the users of hydro — new users, new industry that comes into the province — will look and say, "Why should I go in there and have to pay for their past mistakes when I can relocate in a jurisdiction that doesn't have that surcharge?"

1140

Mr Merritt: The issue of stranded debt is a pan-North American one; there are very few jurisdictions in North America that do not have stranded debt. On the margin, new generation is going to cost whatever the market dictates. The issue of whether or not the government should take a \$20-billion or \$30-billion writedown or whether they should divest of Ontario Hydro is really an allocation issue. On the margin, it is not going to affect the way in which the competitive marketplace works.

The money that has been spent, perhaps unadvisedly, in the past is a done deal. I think what you're talking about is a public policy allocation issue, not something that will have the least impact on the way in which the incremental generation is decided on or built.

Mr Paul McMillan: Mr Kwinter, I think you've just referred to the fact that if I was deciding to build a cogeneration plant in Sarnia and it was susceptible to a CTC or a transition charge and that wasn't the case in Michigan, then ultimately, as an investor, one who's putting up capital for the cogeneration facility, I am going to have to deal with where can I find the best return. In that circumstance, if the market is such that playing in Ontario means that it's a disadvantage compared to playing in Michigan, then I think I would look at making an investment outside of the province in that circumstance. I think that's where your question is leading.

Mr Merritt: But the CTC will be funded by the ratepayer. I'm not a physical generator, but if I were, I would be attaching the CTC to the charges I was paying. No matter how you slice the \$20 billion, no matter how you charge for it, it is going to come out of the pocket of the — pick your favourite hat — shareholder, ratepayer or taxpayer. That's all the same player. Now whether you collect it with a tax, whether you force industry participants to have a surcharge on the energy that they produce, at the end of the day, if I'm a constructor, an operator of a generating facility, I'm going to sell at a rate which reflects my cost of capital and cost of fuel and all those things. If as an administrative requirement you ask me to collect the surcharge from the people I sell to, I'll do

that. But the money is coming from one, and only one, place at the end of the day.

The Chair: To the third party, Ms Churley.

Ms Marilyn Churley (Riverdale): Thank you very much for your presentation. I would like to follow up on the information you gave about California and the fact that you said that very strong consumer protection made it impossible for new retailers to make money. I assume from what you said in answer to a colleague's question that part of that was the actual trying to regulate the cost of energy. What other consumer protection measures were in place that actually made it impossible to make money? We want strong consumer protection here; we want strong environmental protection as well.

I'm concerned that in trying to strike that balance we may lose some of that, especially where — we're standing on a bit of a cliff here — we don't have a lot of the regulations in place yet. Although overall it is a good idea to be going in this direction, I'm concerned about that statement and what it means to consumers here, the bit about: "Trust us. Competitively we will make sure the costs go down."

Mr Merritt: Sure. The major investor-owned utilities in California were required to offer 10% rate reductions to their customers.

Ms Churley: Right away?

Mr Merritt: Right away. As a result, as a wannabe retailer, I come into that market having to buy power out of the California Power Exchange and immediately turn around and sell it in order to compete with the incumbent investor-owned utility for less than I paid for it. I have to have a lot of faith in order to, basically, buy market share on a money-losing basis, that somehow, someday that's going to turn around. As a result, people are staying away in droves.

Ms Churley: Did California bring in emission caps and strong environmental regulation as well?

Mr Merritt: They have always been a leader in that regard, as you know, from the automotive side. They have more wind hydro and geothermal generation in the state of California than in any other jurisdiction in North America.

Ms Churley: Did you find that opening up the market was good or bad or neutral for the renewable energy sector?

Mr Merritt: I don't think we've seen it yet. They only opened up at the end of March and the investment cycle for new generation technologies of course is measured in terms of years, not months. California has an enormous hydro impact and the spring is when hydro flows. It has been a wet year and they've had a lot of hydro flowing. In terms of investment decisions, we haven't yet seen the impact that will make.

Ms Churley: Could you support, for instance, strong emissions caps across the board in this legislation?

Mr Merritt: That is such a complex question that relates to many other things that I can't comment on today related to emissions trading mechanisms. The whole idea of how to regulate emissions is a very broad subject and to give you a narrow comment on that I just think would be

inappropriate, but there are financial ways to deal with emissions issues.

Ms Churley: Finally, just to get a clear answer on the question previously put, and that is, would you support this legislation in the year 2000 when the rate freeze is ended? Would you support the government writing into the legislation that the rate freeze would continue — not talking about a reduction but the rate freeze?

Mr Merritt: While I have every expectation of a rate reduction, I think when you legislate a rate freeze or some kind of a cap, what you're really saying to all would-be investors who come into this market is, "If you bring your energy and your talent and your capital and take a lot of risk, we would thank you for it and in return we would freeze the amount that you could potentially earn down the road."

You're not going to attract investment if you legislatively cap people's upside. I have every expectation that prices will decline because they have declined in every other market. But the notion of legislatively entrenching that will only ensure that the people you want to come to the party to deliver the benefits will not show.

The Chair: All right. With that, on behalf of all the members of the committee we thank you very much for coming before us to give us your advice from other jurisdictions. We very much appreciate it.

CITY OF TORONTO

The Chair: I'd like to now call upon representatives of the city of Toronto and to welcome Councillor Jack Layton. Do you have colleagues joining you?

Mr Jack Layton: Yes.

The Chair: If you would be so kind as to introduce your colleagues. As I'm sure you know, you have 30 minutes for presentation time. You may choose to use that in any way you wish.

Mr Layton: Terrific. First of all, thank you very much for the opportunity. It's good to be here. I'd like to introduce my colleagues representing the city today. Tom Denes is executive director of our works and emergency services department and Kevin Loughborough is a senior engineer with our department specializing in these areas. I'm here representing our mayor, Mel Lastman, who is unable to be here to present today. I'm his representative on our local utility as well, Toronto Hydro — you'll be hearing a submission from Toronto Hydro specifically on Friday, I believe — and I'm chairing our environmental task force.

We've handed out a copy of our brief, and I'd just like to skim through the main highlights quickly so that if you have questions about it we have time for that.

Our main concern is to take full advantage of the opportunities for achieving our city's objectives around smog in particular and around making sure that the most advanced forms of energy supply are available to our consumers. We'd like our city to be famous for its clean energy supply sources and we'd really like to be known as something other than Smogtown. We prefer Hogtown to

Smogtown, but we're rapidly becoming Smogtown, as you all know. In fact, our incidence of smog this year is up quite dramatically.

We've already had 12 smog alert days in the city. I believe last year it was less than half that and we're only partway through the summer so far. If any of you have asthmatic kids, as I do, you know what a smog day can mean. It can be pretty scary. The medical data I know you're familiar with that has been submitted by the various medical authorities. One of our prime concerns is smog, as you'll see as we run through the brief here.

1150

First of all, because we're a very urbanized area we have, we think, a direct interest in Bill 35 with regard to environmental protection and our input will really focus on four or five key areas. We have joined the Clean Air Alliance. City council took a very close look at the stated objectives of that organization and decided to endorse them, as did Toronto Hydro, as you'll hear on Friday. That was approved at a city council meeting, which is noted here.

We've had a lot of interest and reports in front of our council on smog and electricity. I think in general our council is becoming increasingly aware of the connection between something we all used to just take for granted, flipping a switch, and our air quality. It's not something that many of us understood all that well for a long time, and I don't think the public has made the connection. In fact, I doubt very many people realize that if they turn on a light or an air conditioner at 4 o'clock in the afternoon, somebody's throwing more coal on a burner or in a furnace down in the south end of Mississauga and that's directly contributing to our smog situation here.

On the issue of electrical generation, naturally fossil fuels are one of the major sources that we're dealing with in producing electricity. It's recognized in Bill 35 in a section supporting the making of regulations to control emissions and to support emissions trading. We very strongly support these kinds of regulations and we'd like to be involved in whatever way you deem is appropriate in helping to set them.

Of course, you know that recent reductions in the nuclear production have resulted in increased fossil fuel emissions from Lakeview and we believe that's one of the reasons why we've had an increase in smog days here in Toronto this year. It's a fairly direct relationship, we feel.

Fossil fuel emissions vary widely depending on the characteristics of the particular generating station. Our information is that the Lakeview plant — do you all know where that is? Those three big stacks in the south end of Mississauga. The pile of coal out there is quite amazing. It's huge, and I really think most people don't know much about it.

We understand that this particular plant emits significantly more pollutants per unit of electricity produced than other fossil fuel plants operated by Ontario Hydro or other electricity utilities even in the Midwest, and we often talk about the Midwest as that place that we want to avoid the power from, but of course they have a great variety in

emissions as well. Actually in 1995, which is the latest information we were able to get on Lakeview, the emissions were 17.5 pounds per megawatt hour of SO₂ compared to 10.2 pounds, which is roughly 60% at Nanticoke, so there's a real difference between the plants operated by Ontario Hydro. In the Ohio Valley the range runs from 1.61 pounds, which is a minuscule fraction of our Lakeview situation, right up to 53 pounds, which is dramatically more than our Lakeview station.

What this suggests is that whenever we develop caps and regulations, we're really going to have to take a look at specific installations as we do that and try to construct our caps to phase out or control the dirtiest sources and encourage the use of power from the cleanest sources. The independent agency that's making the selections on power of course can have a huge influence on this decision and we need to set up a regulatory framework where the decisions they make clean up our air. That's the basic proposition we're making.

With regard to emissions caps — I'm on page 2 — the Toronto air shed would certainly benefit from the setting of emissions caps initially for NO_x, SO_x, toxics and carbon. Consideration should also be given to the setting of caps for each generating station or a cluster of generating stations in any particular air shed, in addition to a cap for the province as a whole, because otherwise you could end up with some localized very serious problems, which is what we think we're facing in Toronto right now. And of course the caps have to apply to electricity not generated in Toronto because a significant chunk of our smog — not all of it — comes across the lake from other places.

Caps should have a time criterion as well. You probably need daily and monthly caps so that you don't have spikes that send you through the roof because that, combined with certain air conditions, can really create problems here in terms of smog. Provision should be considered in the legislation to allow for special control of emissions on smog alert days. This is not provided for at the moment, and I'd ask you to seriously consider that whenever a smog alert has been declared by either the environment ministry or a medical officer of health special provisions and special caps go into play in those circumstances. It really could make a difference to the health of those facing asthmatic conditions and seniors and so on.

The Toronto air shed could include both the Lakeview and the Hearn. Do you all know where the Hearn is? It's the plant that's not operating at the moment down in our port lands. We're not unalterably opposed, by the way, to opening up the Hearn in some new configuration that would be much more energy-efficient, perhaps using natural gas and perhaps involving cogeneration. Something along those lines may be something we could look at.

Station emission caps should be designed in a way that provides an incentive for the proposed province-wide Generation Corp to use cleaner stations whenever possible. So use the clean ones first and the dirty ones last. If you can structure the regulations that way, that would

have a big impact. The Hearn station site in the port area is presently served by natural gas, and shifting production from Lakeview to Hearn is an option that would significantly reduce air pollution, especially if we made it a cogen plant. The efficiencies there could be really terrific. Shifting production to the Hearn would bring combined heat and power into the downtown heating market which is served by our district utility, Toronto District Heating Corp, which is the largest in the country, by the way.

On cogeneration, we believe that the development of cogeneration of heat and electricity in Toronto would improve air quality by increasing the efficiency substantially. Our district heating company of course is really impacted by rising gas prices. If we switch to cogeneration, the efficiencies that they pick up as a result can help to insulate the customer from the impact of shifting gas prices.

You might be interested to know that we've recently approved a cogen facility in North York which is actually going to use compost from multiresidential buildings, which we will digest and use the gas to produce combined heat and power. There's an environmental win-win-win, and we have a private sector partner. It's a terrific partnership, and it might become the beginning, we hope, of a little industrial energy park up there in North York which should bring some business to the city as well, and of course it means we're not sending those tonnes of smelly organic materials to Richmond Hill's landfill either, so we may make some friends up there. We really feel that cogen is an important element of the future here and we want to make sure that whatever regulations you put in place help to encourage that new industrial sector to grow.

On the community energy systems, Bill 35 should specifically, we think, support community energy systems in urban areas and establish highly efficient combined heat and power, cogen, plants. The legislation should support the integration of electricity, heating and cooling systems because the integration has the potential for a major improvement in energy efficiency, lower fuel costs and better air quality.

We've actually, through the Federation of Canadian Municipalities, just come back yesterday from a study in which 40 mayors and senior councillors participated, looking at cogeneration in Europe. Believe me, it's astounding what they're accomplishing over there, and the excitement about what we could do here is growing rapidly.

You've probably also heard about our plan to use lake water to try and cool our downtown buildings and shut down these huge air conditioners. If you're interested in that, I'd be happy to tell you more about it, but it looks like a project that's going to go ahead and will dramatically reduce air emission problems here in Toronto. This is a megaproject of sorts with real positive environmental benefits and it'll finance itself, by the way. We won't be coming to ask you for any financial support.

Ms Churley: You wouldn't get it anyway.

Mr Layton: Well, one remains ever hopeful on all fronts. Don't we all? If we were asking for money, I think Mayor Lastman would be here making the request, not me. He has a turn of phrase.

I'd like to move to the question of renewables. We really do believe strongly that a renewable energy portfolio standard should be a part of what you're doing and in fact we're actively exploring through Toronto Hydro and through the city renewable energy projects.

1200

Again, in Europe we just found out that in Holland, for example, they're approaching 2% of their supply coming from renewables. They've set 5% as their target for the year 2000 and 10% down the road. The way they've done it is to simply say, "As a part of the mix of generation in our community we want to see renewables enhanced and we're going to have a gradually escalating percentage of renewables to be a part of the mix." They've found that the public there really strongly supports this. They like to know that some of their power is coming from renewables.

It's interesting, you know. We actually have an excellent wind regime along our waterfront that is as good as what we saw in Holland, so the possibilities to look at wind energy, for instance, in Toronto I think are there and we're very actively looking at them. Of course, they have a price of energy in Holland that is rather different from ours, which makes the economics of some of these things look rather different as well. But we think the public would very strongly support it. Gradually, when you create these renewable energy standards, you create markets for new businesses in that field and the price per kilowatt hour is going to drop dramatically as the technologies and efficiencies improve. There's no question that would really help out in our effort.

Speaking to that, we are using a major renewable energy technology ourselves right now, which is collecting landfill gas and producing electricity from it. If we regard food as a renewable resource, which I think we can at least for the moment, then the digestion of that, whether it's in a landfill or, better yet, even in a special digester, this is a renewable — green, if you will — approach to producing electricity and we're moving on that. Kevin and Tom can tell you more about that, but it's a big project and we think you can include that in your renewable energy standard.

It's not as though we don't have renewable energies already in Toronto. We do, and they'll be growing very rapidly as we divert more and more organic waste into a process that generates methane to then generate combined heat and power. This isn't some wild notion, that we could have renewable energy. We're not talking about expensive windmills on everybody's houses and photovoltaics on everybody's roofs, although there may be some on some people's roofs if they want to get involved in that. Toronto Hydro will tell you about their program for that.

In terms of the future cost of electricity, naturally we are concerned. We are concerned about any potential rise in electricity prices to our residents because ultimately that affects our competitiveness as a city in attracting

economic activity, so you would expect us to be concerned, as I know you are. Cross-border capacity is reported to be approximately 4,000 megawatts, or about 18% of the total at the moment. If the entire cross-border capacity were used to transmit electricity from out-of-province sources to the Ontario market, Genco would still enjoy three-quarters of the Ontario market, with competition initially limited to a few existing non-utility generations. However, the limitation in cross-border capacity should not be increased if an increase would result in the importation of more high-emission electricity from the US Midwest.

We really feel strongly about this. In 1995 the SO₂ emissions from stations in the Ohio valley and Great Lakes states ranged as high as 53.87 pounds per megawatt hour compared to the 10.2 pounds at Nanticoke, so shifting power to those sources is going to be five times as bad for our environment. We really need you to withstand any pressure to bring in that power, even though it might be lower-priced, because we'll be paying the costs in other ways in our community.

In addition, cross-border capacity should not be increased without providing the conditions in Ontario to support the development of cogeneration at home and community energy systems. The citizens of Ontario, and particularly in the city, will look to the Ontario Energy Board to strike a balance that will support and nurture local cogen and other environmentally advanced power projects. If considerable capital dollars are spent on increasing cross-border capacity first, it may not be possible to build the business cases for the cogen and environmentally advanced projects in Ontario. It's a question of where you divert your resources at the outset and we're just calling for a balance. That's all we're asking for here: Make sure that we're investing at the same time or permitting investment in those projects as well as in the cross-border capacity.

We're recommending that section 65 of your legislation be augmented by enabling text giving the OEB the authority to establish minimum emission standards for out-of-province sources of electricity, in addition to ensuring equal access to respective markets.

I've already talked a little about landfill generation projects so I won't repeat those paragraphs, but we just want to make sure that the legislation facilitates this kind of thing, because if we can collect methane from landfill and produce power and maybe even cogenerated heat and power, this is a very, very positive thing. We want to make sure that the legislation doesn't stand in the way of it. I don't think we have any specific recommendation on that at this point, Kevin and Tom, but we're flagging it and we'd appreciate it if your legislative drafters could have a look at this and make sure there are no obstacles to this very positive direction.

On emissions trading: A market for emissions trading would provide additional revenues to support the business case for landfill gas to electricity and other green and energy-efficiency projects. An emissions trading system should be in place at the start of the deregulated market. I

know a lot of work is being done on that right now, both provincially and nationally. We just think it's critical that these things have to be in place at the outset.

The system should be designed to provide credit for early actions so that people who are getting started on innovative projects get some credit for that right now. The city is developing a position on emissions trading which we'll be making available to you very soon.

On distributed generation: The distributed generation of electricity geographically is an alternative way to relieve pressure on developing capacity limitations in the transmission grid. As you probably know, downtown Toronto has a huge demand and the transmission capacities are an issue down there. A separate services corporation responsible for transmission, Servco, should consider local generation as an alternative to investing in additional transmission capacity. If you've got dollars to spend you can either put in bigger wires and transformers, or maybe it makes sense to put new generation closer to where the demand is, and that new generation would be more energy-efficient than the old generation that would be phasing out; for example, Lakeview. So rather than spending on larger wires to take more Lakeview power to downtown, maybe we could put a more efficient energy production system close to downtown. That's the kind of thing we are hoping you will help us to facilitate.

There are some illustrations here that I won't go through which you can read over. But the legislation should define the core business of Servco to include not only the provision of transmission and transformation but also the provision of local generation or the facilitation of that where this is more cost-effective. So you should require Servco to look at the business case for investing several hundred million dollars in new wires and transformers versus putting that investment into new energy generation. If you define their mandate very narrowly just to transmission, then they may miss that opportunity and that would be I think a lost opportunity which would have environmental benefits as well as economic ones.

The last couple of points. On customer choice at the end of our brief: Clear disclosure of generating sources and associated emissions to customers, in addition to you, the Minister of the Environment, would give customers the required data to make informed decisions. I think we've all become used to that kind of labelling on some of the appliances we buy and certainly on the food products. We're always checking to see what the ingredients are. We should do the same thing with electricity, so that when people are buying electricity they know where it's coming from and it's clearly and validly stated. We think that then the market will be transformed, as some consumers at least decide they want to buy cleaner power even if it has a little bit of a price increment. They just decide they're going to make that choice, and if we give them that choice, things will start to move.

Certainly at Toronto Hydro we would want to be known by our customers as a company providing a mix that includes some environmentally advanced programs.

We think it's a good marketing technique. Of course we can see that most of the utilities in the States are doing this too. For example, if customers are informed about the environmental benefits of gas-fired electricity generation at landfill sites, they may choose to purchase that clean source of electricity, especially if they live in the same air shed, because we can then draw the direct benefits of a decision they make that will reduce the incidence of smog in the city.

To summarize, we support the provisions in Bill 35 to minimize the emissions from power generation. We request the opportunity to provide some input into the setting of standards when that time comes, regulations and market mechanisms, to achieve these regulations. The citizens of Toronto who live in this highly urbanized area will benefit from actions to improve air quality under Bill 35.

Perhaps I could wrap up. You're probably getting near lunch. We're available for questions as long as you want to give them to us.

1210

The Chair: You might get some questions. We have three minutes allotted for each caucus. Just to remind you, colleagues, that includes time for the questions and the answers. We'll begin with the official opposition.

Mr Conway: Conway asking and Layton responding in three minutes. Jack can be here representing Mel Lastman. He and I can have a question-and-answer that takes less than three minutes.

Question: Councillor Layton, on the distribution issue in the city of Toronto, one of the questions the committee is going to have to deal with is the boundary. There's going to be a rationalization. There are going to be changes to streamline the whole system, including distribution. I'm not as familiar as I probably should be with what is now the Servco involvement within the city of Toronto. But you've certainly attracted my attention with that observation in the latter part of your brief. We'll have Osborne from Hydro here this afternoon. But what would the view of Toronto city council be in terms of Servco's ongoing activity within, say, the city of Toronto given the maturity of the grid system?

Mr Layton: Right now, and I'll ask Tom and Kevin to help me out with this one, of course we're primarily purchasing power from what would become Servco through Toronto Hydro and then distributing it to our local customers. We don't see Ontario Hydro going direct to our customers. We believe our utility can do a fine job in that area. As far as that goes, I wouldn't see a major change. No doubt we'll have competitors also coming direct to our customers. We expect that and we're preparing ourselves for that. We're going to do fine as long as the framework is set up in a fair way.

I wouldn't quite share the perspective of the previous deputant on the attitude of municipal utilities. We believe we can retain the vast majority of our customers. We have a long history with them and we're going to make sure that we're competing with anybody who wants to try and take them away and we'll compete and succeed in the vast

majority of cases. Did you want to add any comments, Tom, Kevin, on this question?

Interjection.

Mr Conway: The minister hinted, by the way, in his testimony, and I could cite the page if you want it, that the distribution costs in the city of Toronto are relatively high.

Mr Layton: Yes.

Mr Conway: And you expect those, of course, to be pressured downward, I assume, in this new scheme of things?

Mr Layton: Yes. We're already working with the amalgamation now of our utilities and that's producing some efficiencies. As well, we're dealing with very old plants. This needs to be recognized, especially in the old city of Toronto. There we're dealing with old technology. They don't make the parts for some of these babies any more. It's literally down to that. It also means that for our workers there are additional health and safety concerns. They're dealing with older equipment. So there are some premiums.

Of course the density and the complexity of the provision of power to a complex of high-rise buildings and institutions downtown is going to be different from, let's say, a suburban subdivision, dramatically different, and everything is worked in close quarters. There will always be some extra costs. But we wouldn't accept the proposition that Toronto Hydro has somehow been a profligate spender. That simply hasn't been the case.

The Chair: To the third party.

Mr Lessard: I just have one short clarification with respect to what you said about the renewable portfolio standards, which I think has some merit to it. If you have some recommendations for changes that can be made to the legislation, we'd appreciate receiving those from you at a later date. You also said there should be greater customer choice in that knowledge of where power is being produced will give customers the choice of whether or not they want to pay more.

I'm wondering whether those two things are opposite to one another. First you're saying the government should regulate a percentage of renewable power and then you're saying there should be consumer choice as well and consumers will choose various options even though they have to pay more, and I'm not sure if that's the case. I think at the end of the day that consumers are more likely to go to the cheapest source. That's basically what I think the market will drive things towards.

Mr Layton: Let me try to respond to that. I see these as complementary mechanisms. The renewable standard would be the baseline and there will be some sellers of electricity who may want to exceed that. I'd liken it a little bit to what you see in health foods, for example. Health Canada sets certain basic standards around the production of foods and most people buy those foods, but some people want something extra. They have special concerns about that issue, and the fact that you've required the labelling gives people that option to go beyond the minimum.

Besides, the minimum should also be a moving target. As the years go by you would expect that standard to rise

gradually so that you're continually moving towards a more renewable and more sustainable energy supply. In a sense the two can work together because you get some people used to buying a more advanced renewable power source, then you're building a market for those products and the price begins to come down and then your standard can move up without imposing an unreasonable hardship on those consumers who aren't motivated primarily by an environmental objective. So you get that kind of moving target. There are some very interesting examples in the States where this kind of thing has happened, where moving targets have been set, and it really does open up new markets. Old technologies get phased out more quickly and new ones are brought on more quickly.

The Chair: To the government caucus.

Mr Hastings: Mr Layton, I hear you very rosy scenario about how Toronto Hydro will be able to compete in this new deregulated market, but do you realize that under Bill 35 all the utilities will have to submit their pricing and their costs of operation to the OEB in its new, mandated role? I can't for the life of me see how Toronto Hydro is going to be able to compete on a per kilowatt hour with all the things you have in terms of the old infrastructure in the old city of Toronto, in terms of the disconnected computer models for geographic systems. Etobicoke got way ahead of the rest. North York was following.

In terms of everything you want to do, I think Toronto Hydro faces some major, major cost challenges to be able to be competitive in that deregulated market. When you look at consumer choice you're going to have the option, people will have the option, of consumer choice not just of where the dirty emissions come from but in terms of the actual day-to-day operations of replacing that infrastructure.

I don't know how you're going to do it, because you've got billions of dollars of new replacement that you need not only in the old city of Toronto but in some of the older areas of the suburban cities. I don't know where you're going to get those costs ratcheted down in an economic model that can go in there and compete with whoever comes along as a local retailer, because the MEUs are going to be competing not in a very protected market but in an open one eventually.

Mr Layton: I hope you'll also ask that question of our Toronto Hydro representatives, who will be able to answer it more technically. We look forward to the regulation of our distribution of electricity. In the past we've gone to Ontario Hydro. Ontario Hydro has regulated our pricing. There's been a weird relationship there which we won't get into, but we think that having to come out in a very public environment to justify our costs is a good discipline for us to get into.

We're preparing ourselves for it. We're optimistic. Anybody selling electricity within our city will have to use our wires, so we have to be sure that we're offering an economical and justifiable service when we charge for that service. The OEB I'm sure will work with us, challenge us; we'll have environmental groups and competitors in

the hearing room putting our noses to the grindstone and we're prepared to deal with that. We're excited about that opportunity. I'm not going to say it's not a problem; I'm going to say it's a challenge.

Mr Hastings: Huge.

Mr Layton: Sure, it's a big challenge but we think we're up to it.

Mr Conway: That's exactly the word.

The Chair: That's our time for questions. On behalf of each of the members of the committee I thank you for taking the time to come before us this morning. We appreciate your input.

Mr Layton: Thank you. We'll respond with something more on the question asked by Mr Lessard.

The Chair: OK. Colleagues, in the presentation just before this group there were a couple of short-form views and I'll try to catch these in the future until we're all on to the jargon to make sure we're clear on this. "LDC" is "local distribution company"; that's the wires company. The gentleman I think was saying "OMBC" and he was really referring to OMDC, the Ontario Market Design Committee. We'll try to watch for that so it's not confusing as we go through.

That concludes our presentation this morning. We will recess now and reconvene in this room at 1:30 this afternoon.

The committee recessed from 1221 to 1330.

ONTARIO HYDRO

The Chair: Good afternoon, everyone. The standing committee on resources development hearing Bill 35 is called to order for our afternoon session.

We're very pleased to welcome representatives from Ontario Hydro this afternoon, led by Ron Osborne, the president and CEO. Would you introduce yourselves for the Hansard record, please. As you know, an hour has been allotted for your presentation. You may use all of it for presentation time or you may leave time for questions.

Mr Ron Osborne: Thank you, Madam Chair. Good afternoon, ladies and gentlemen. As the Chair indicated, my name is Ron Osborne. I'm the president and CEO of Ontario Hydro. I'm sorry that our chairman, Bill Farlinger, can't be here this afternoon. We have a board meeting and a nuclear review committee meeting taking place as we speak in Darlington, which I attended this morning.

I am here representing Hydro this afternoon, together with three executive vice-presidents: Eleanor Clitheroe from the services company, or Servco, as we call it; John Fox from the generating company, or Genco; and Carl Andognini, who is our chief nuclear officer.

Over the next few minutes I will briefly update you on our preparations for the new competitive marketplace. I will also give you Hydro's perspective on the restructuring of the electricity industry and some of the restructuring issues that I am sure you will be considering as these public hearings progress over the next few days.

I want to say at the outset that we believe Bill 35, the Energy Competition Act, will greatly benefit the electricity customers as well as the taxpayers of this province. Opening the electricity market to wholesale and retail competition and encouraging customer choice will put the customer in the driver's seat for the first time. Electricity companies will no longer choose their customers; customers will choose their suppliers. Electricity companies will have to produce and deliver power better, cheaper and in an environmentally friendly manner to become a market leader.

Because competition encourages cost control, it will produce the lowest prices, and that in turn will make all of our industry more competitive. This will result in jobs and economic benefits for all Ontarians.

Let me give you an example from a sector that I am somewhat familiar with, the Canadian telecommunications industry. The overall effect of telecom deregulation and competition on employment has been positive. While the original players may have lost some jobs, competitors created many more new jobs, and suppliers also made major contributions to employment, particularly on the R and D front.

In my comments today, I want to focus on three specific restructuring areas that are addressed in the legislation. These areas are: (1) The launch of the successor companies to Ontario Hydro on a sound financial footing, thus protecting the value of the investment that the province has made; (2) the creation of a competitive electricity market that provides the lowest possible prices and supports job creation; and (3) the need to ensure that stranded debt is paid off efficiently, fairly and expeditiously.

Let me begin with the launch of the new companies. As you are aware, we are about to launch three new companies from what is now Ontario Hydro. One is the Independent Market Operator, the IMO, whose role will be to ensure that the electricity market is operated fairly. The other two will be commercial electricity companies. One will take over our current generation business and the other will hold our energy services and wires businesses.

The new companies are being created from what is a very valuable collection of assets owned by the province. Ontario Hydro today provides very reliable power at competitive rates. We are especially competitive with utilities south of the border in our extended market area, which is the northeastern and Midwestern US states. We are based in Ontario and we employ 21,000 people.

As the successor companies enter the competitive marketplace, our goal is to preserve and maximize the value of these provincially owned assets. There are still many matters under discussion as we move from a monopoly system to competition, such as the appropriate financial structures for the new companies, the mechanisms for paying off stranded debt, and market design. We will address these later, as I am sure others already did this morning and will over the next few days. However these matters are resolved, let me emphasize that our number one objective as we move forward is to create

value for our shareholders, the taxpayers of Ontario, in this new market.

I'll give you a brief description of the two new commercial companies about to be created, and I'll start with Genco. Genco will take over the current generating assets of Ontario Hydro. Ontario Hydro's generators now supply some 86% of the province's electricity demand. We generate electricity from five nuclear stations, 69 hydroelectric stations and six fossil-fuelled generating stations. The balance of the Ontario market is supplied by non-utility generators, such as TransAlta, Westcoast Power and Northland Power, which supply some 7%; imports from other utilities such as Hydro-Québec, Detroit Edison and the New York Power Authority, which supply some 2%; and other sources, such as power generated by industries for their own use, which satisfy some 5%.

That's the situation in power supply today. Over time this will change dramatically as other generators, perhaps including some municipal utilities, displace some of our generating capacity. This will inevitably prompt Genco to look elsewhere to utilize its capacity, and that means southward to US markets. Over time we will undoubtedly swap or lease some of our assets in Ontario and acquire assets in the US northeast. The number of market players in Ontario will increase as a consequence.

What is the backdrop against which Genco will in fact compete in US electricity markets? Genco is being created in the midst of a North American electricity restructuring that will likely result in some 10 to 15 major generators a decade from now. There are widely held views within the industry that there could indeed be some generators with as much as 80,000 megawatts of capacity, almost three times Hydro's current generating capacity.

Recently, American Electric Power and Central and Southwest Services announced a merger that will result in a combined capacity of more than 37,000 megawatts, making that company, merged, the largest generator in North America. At one time in the recent past, we at Hydro had the distinction of being the largest generator in North America. Today we are in the top five, with roughly 30,000 megawatts. That assumes the ultimate bringing back of Pickering A and Bruce A.

We believe it is important that the province maintain a large electricity generating company with its head office right here in Ontario and that this company do business and compete with North American competitors, however large. The white paper implicitly recognized that it is important that our Genco maintain a certain critical mass of assets so that we can compete effectively in this larger marketplace. As a large generator with its initial focus in Ontario, we have a far greater likelihood of maintaining jobs here in this province and creating other economic spinoffs, including R and D.

Genco's strategy is to remain one of the major continental generators, based right here in Ontario but with a growing presence in the northeastern US market. We see many opportunities as the US electricity market opens to competition. Genco's market area in the northeastern portion of the continent is a US\$30-billion market. Our

30,000 megawatts constitute about 15% of the generation in this market area, which stretches from Illinois to New York and from Ontario to Kentucky, giving you some idea of the scope of that potential marketplace.

Genco will have some major competitive advantages that will help it compete in the electricity business in the US. For example, we generate electricity at a lower cost today compared with US utilities in our market area. We have a very favourable generation mix of water power, nuclear and relatively clean fossil generation. Our air emissions system-wide are low compared to our competition, which generates electricity mainly from coal.

1340

We are looking forward to the challenges of competing in this larger market. We're also encouraged by the support for our strategy that we received from the Ministry of Energy, Science and Technology during the minister's introduction and second reading of the bill some weeks ago.

Let me now turn to Servco. This is the second major company to be created under the act. This company will hold transmission and distribution businesses, as well as retail and energy services businesses. Its focus will be to ensure safe and reliable delivery of power to customers at competitive prices through continual productivity improvements. These improvements will be driven by competition and by growth.

Servco operates one of North America's largest and most reliable transmission systems, one of the largest microwave systems on the continent, and the largest electricity distribution system in Ontario. It has a presence in all corners of the province, retails directly to almost a million customers, and has a skilled workforce that designs, builds, operates and maintains network services.

The wires portion of Servco's transmission and distribution businesses will continue to be regulated with a goal of ensuring that Ontario continues to have a safe and reliable transmission grid and distribution network. Servco's goal for its unregulated, competitive businesses is to expand into a major, successful energy services company. There will be an appropriate degree of separation between its regulated and its competitive businesses.

Servco's vision is to contribute to the province's objective of gaining efficiencies in our electricity distribution sector by entering into a wide range of negotiated business arrangements with municipal utilities. Servco and the municipal utilities could provide services to each other, enter into partnerships and joint ventures, or even acquire each other's assets. These future negotiated business arrangements will help improve productivity, reliability and service, as well as lower costs and increase financial returns to the provincial and municipal shareholders.

Another growth area for Servco is to provide new interconnections in the future so that more power from other jurisdictions can be brought into the province. It is also in the services area that many new electricity products and services will emerge, such as district heating, small-scale generation at the customer's premises, and building energy system services within buildings.

We are now in the process of readying these two companies, Genco and Servco, to compete in this new marketplace. There is a tremendous amount of work to be done in separating the successor companies after 92 years as one whole company. The government has advised us that we should target late in the first quarter of 1999 for the two successor companies to begin operations.

Over the next few months, after the Legislature has reviewed and, I will assume for this purpose, passed Bill 35, the government will appoint the new boards of directors, the management structure will be put in place, and employees will move into the two new companies. Genco and Servco will be in a good position to compete when the market then opens a year later in the year 2000, and we intend to provide a substantial return to our shareholder, the people of Ontario.

Up to this point I've been focusing on our preparations for the new market. However, please be assured that we are not taking our current operations for granted. So far, this has been a very eventful year from an operations standpoint.

As you well know, in May and June we were able to maintain electricity supply, despite record heat and demand for power, when other utilities to the south were appealing to customers to limit electricity use. We were also able to participate, I might say, in a very positive way in the export market during those months.

Recently, we have been working hard to correct billing difficulties for our customers, or some of our customers, created by the switchover to a new billing system. Let me assure you that we haven't lost sight of the day-to-day. This is a major priority for us, and particularly Servco. We have dealt with a lot of justifiably angry customers over the past few weeks and we are doing everything possible to make the situation right with each of them while fixing the problems in the new system.

We're also continuing to focus resources on recovering our nuclear operations to their former operating excellence. It was a year ago tomorrow, I'm told, that Ontario Hydro held a press conference to discuss our nuclear problems and our proposed solution. Since then, the select committee on Ontario Hydro nuclear affairs has reviewed our recovery program and our board has reconfirmed the basic decisions within that program, including the layup of Pickering A and Bruce A units.

Over the past couple of months we have reached lateral transfer agreements with our two major unions, the PWU and the society, that make it easier to move staff to where they are needed to achieve the nuclear recovery plan.

We are also pleased to announce that we have reached a new collective agreement with the Power Workers' Union that gives us more flexibility in deploying staff over the longer term, not just in the context of the NAOP program. I believe that this is indicative of a new spirit of cooperation between Hydro and the Power Workers' Union.

We are also now seeing encouraging early signs of nuclear recovery progress. The World Association of Nuclear Operators, or WANO, as part of their scheduled

visits to Pickering and Bruce have recently performed extensive studies of our program and have concluded that it is sound. We know we still have a long way to go — it was, after all, a five-year program — but we're determined to get there. Once we fully recover our nuclear operations, we believe this will be a big competitive advantage for us and a very valuable asset for this province.

This brings me to the second area that I want to discuss, which is to ensure that a competitive electricity market is created, providing the lowest prices and supporting job creation. I stated up front that we're very supportive of the province's move to electricity competition. There are still some issues that need to be dealt with to ensure that a fair and competitive market is put in place.

I mentioned earlier that Genco starts out with about 86% of the Ontario generation market. This has led to much discussion of the company's potential market power. Can there be a truly competitive market for electricity generation when one company starts out with most of that generation?

We believe that Genco's market share in Ontario will clearly be reduced over time as other generators enter the market. The questions of what our market share should be, how quickly Genco should move to that market share and what interim measures should be taken are all questions which the Market Design Committee is currently reviewing.

Some of the options they are examining to mitigate Genco's market power include vesting contracts, asset swaps, leasing some of our generating facilities, as well as building new inter-ties with the neighbouring provinces and states to bring in more power from outside.

Another important issue related to competition is to ensure that Ontario electricity companies have the ability to compete in other jurisdictions when companies from those jurisdictions are competing in Ontario.

We have many electricity customers right here in Ontario that have facilities across North America. We will be interested in contracting supply to all of the facilities of these companies within our market reach, just as competitors from other provinces and the US will be attempting to supply all their needs. We must have access to all those markets to compete for these customers.

I was greatly encouraged that the new legislation recognizes this issue, proposing to give the Ontario Energy Board the responsibility for considering comparable access in determining the entry of players into our electricity market.

Environmental protection is another area where we will require a level playing field. We support the provincial government's intention to take strong environmental protection measures in the design of the competitive electricity market. It is only fair that any generators wanting to sell electricity in our market should meet the same emission performance standards that we will be meeting in Ontario.

Now I'd like to discuss briefly the third restructuring area, which is to ensure that stranded debt is paid off

efficiently, fairly and expeditiously. Stranded debt is defined in the legislation as the amount of debt and other similar liabilities that cannot reasonably be serviced in a competitive electricity marketplace.

There are two points that I would like to make on this subject.

The first is that when we talk about stranded debt, we are not talking about new debt. There will be no new debt on anybody's balance sheet as a result of the restructuring of the electricity industry. The debt is already on our balance sheet.

The interest on our debt is now and always has been fully incorporated within the price of electricity. There will be no new government-guaranteed debt that will have to be recovered in future rates.

Ontario Hydro's current debt level is \$31.1 billion. We have had no new net borrowing so far in 1998, and at this time we do not expect to increase the level of debt by year's end. In addition to the debt, we also have liabilities for our contracts with non-utility generators, the so-called NUGs, and liabilities for future nuclear waste disposal and the decommissioning of our nuclear reactors. All of these liabilities have been accounted for in the past within our current rate structure on an amortized basis.

1350

The second point I want to make is that all the discussion surrounding stranded debt is simply about how to allocate the existing debt and other liabilities within the restructured electricity industry.

The Ministry of Finance is currently determining how to deal with that portion of the debt that will be stranded in the move to competition. It is a matter of estimating the financial results and value of Genco and Servco, valuing the successor companies after considering such factors as potential productivity improvements and revenue reductions caused by competition, and then establishing the level of stranded debt.

As you know, the government has indicated the importance of ensuring that these companies are viable and financeable. Genco and Servco need to be corporatized on a sound financial footing with an appropriate level of debt that they can service. At the same time, they will be required to make payments in lieu of property and income taxes, interest payments and dividends to the new debt holding company that will gradually discharge the stranded debt. Any residual stranded debt that Hydro cannot service through these cash flows will be paid off through a competitive transition charge.

There has been a lot of discussion about stranded debt, but it still isn't widely appreciated that Ontario is not unique in dealing with this issue. US regulators are also dealing with stranded debts of utilities in those jurisdictions that are deregulating their electricity industries. They are allowing for the recovery of utility debt that is not serviceable in a competitive marketplace, recognizing that the utilities made investments to serve a monopoly market.

Here in Ontario, we must also determine the fairest and most effective way to manage and pay off all debt,

including stranded debt. I am confident that the government will implement a solution that will not result in a burden to electricity customers or the province's taxpayers.

Let me conclude my remarks now by saying that we at Hydro are very supportive of the intention of the Energy Competition Act. You may recall that Hydro has consistently and publicly been in favour of competition over at least the past five years. This new legislation is very much in keeping with what my predecessors have advocated over those years. It will result in a competitive electricity market, and competitive markets put the customer first. Our successor companies are keen to compete in this new marketplace, an expanded North American marketplace creating real value for the people of Ontario.

The new market will evolve and competition will gain increasing momentum over time, but we will all have to walk before we can run. We must be prepared to give the new market time to develop, and it will take time to work out some of the issues such as market power, equivalent access, or reciprocity, and finding the appropriate mechanisms for paying the stranded debt.

This is, of course, new territory, yet I am confident we will all reach our goal of a fair, competitive and transparent market that benefits electricity customers and the province.

We wish you well as you proceed with your hearings and we look forward to your questions.

The Chair: Thank you very much. We have about 11 minutes for questions from each caucus and we'll begin with the third party, the NDP caucus, Mr Lessard.

Mr Lessard: Mr Osborne, in your remarks you've made an estimate of the current debt level at \$31.1 billion. One of the issues that we've been struggling with and will continue to struggle with is what the amount of the stranded debt may end up being. I'd like to know if you have any ideas as to what the stranded debt may be and whether you are involved with ministry representatives in determining what the stranded debt may be and what criteria you feel are important in determining what that number is, because we as legislators feel that that is critical in determining whether Bill 35 is going to be successful in lowering rates for consumers in Ontario. Until we actually know what that number is, I certainly am not comfortable, and our caucus isn't comfortable, with moving ahead with this legislation based on the vague assurances from the minister that this is good for consumers and the environment in Ontario.

Mr Osborne: We of course look forward as much as anybody to knowing what the stranded debt calculation finally looks like, since we are in a sense both the victim and the beneficiary of whatever results from that. The reality is that the stranded debt calculation is part of a series of interrelated activities, including market design, and what comes out of the Market Design Committee with respect to recommendations for, for example, vested contracts or other ways of mitigating market power is a function of a variety of issues such as the appropriate

payments in lieu of property taxes and income taxes that are being calculated as we speak and will be a function of the valuation of the anticipated revenue streams of these companies.

The Ministry of Finance has hired the best advisers that it can find from both within Ontario and the United States. We equally have hired the best advisers that we can find. Our role is not to determine the stranded debt. Our role is simply to provide inputs as requested to the Ministry of Finance and its process. We are active in that regard both through the Market Design Committee and directly with the Ministry of Finance.

I would re-emphasize that in assessing the potential impact of stranded debt one should not lose sight of the fact that the debt is there today. There is no new debt coming out of this process. The \$31 billion that you refer to is our straightforward debt on our balance sheet. In addition to that, there are obligations ongoing with respect to the NUGs I referred to, or the non-utility generators, and there are the nuclear decommissioning and nuclear waste disposal costs accrued to date in our balance sheet at approximately \$3 billion.

Those are not going to go away. Those are there. Those obligations are there. The issue is how you apportion those obligations between the debt company and the successor, surviving companies, Genco and Servco.

We are today servicing the interests and the carrying costs, other than principal repayments, because we have a steady state balance sheet, out of our current rate structure. We are paying all of our interest. As I indicated earlier, we do not anticipate increasing our debt level this year, so this year's capital expenditures will be funded out of this year's cash flow. That is an objective we have set ourselves and these will be the kinds of objectives that the successor companies will set themselves going forward.

I, like you, would like to see the figures sooner rather than later. It's an iterative process that will come to a head sometime in the fall, and we're all busy beaver away and providing information to all those parties that are scrutinizing and dissecting our balance sheet as we speak.

Mr Lessard: At some point in the fall we will get that number as to what the stranded debt may be. I'd like you to explain to us, from Ontario Hydro's perspective, what the impact would be if that guess of the stranded debt is either too high or too low.

Mr Osborne: If the amount of debt that is left with the successor companies is too high, which is another way to express the equation, then those companies will end up with a credit rating that is not sufficient to raise the right investment grade money without a provincial guarantee and there will have to be a refinancing of the balance sheet at some point.

If the debt that is allocated to the successor companies is too low, then those companies will end up with too good a credit rating, too high a credit rating, and there will be too much value that, if you like, accumulates to the shareholder. It so happens the shareholder is the province, so that's a zero-sum game, if you like.

Quite obviously, there are competitive impacts in that sense. Nobody's intention is to undercapitalize or overcapitalize the successor companies' balance sheets, but to the extent that you put too much debt or too little debt on the successor companies' balance sheets, you will in effect either increase or decrease the shareholder value in the equity portion of the financing going forward. That is why it's important that we get it right.

We will be going for credit ratings in the early part of 1999. We will hear from the Moodys, the DBRSs and the Canadian Bond Rating Services what they think, and they in a sense will, over time — because it won't be self-evident from day one — tell us whether we got within an appropriate range. To the extent there is a mistake and too little debt is left with the successor companies, clearly the province will get higher dividends, will have higher income taxes from these companies and will pay off debt faster. To the extent there is too much debt left with the companies, interest taken out will be too high, but dividends and income taxes will be reduced.

In a sense, given that we are carrying all that debt today in our rates, it balances. Our objective is to get the right balance so that we end up with an appropriate investment credit rating from the rating agencies.

1400

Mr Lessard: My concern is that we as an investor get it right as well, because you know the possibility that Ontario Hydro isn't competitive isn't something that I look forward to seeing in the future because the ramifications of that are quite substantial for taxpayers in Ontario.

One of the factors to be considered in determining what that amount is is the anticipated revenues of the new companies. I wonder whether you can support the extending after the year 2000 of the freeze in rates that's been in existence for a number of years now.

Mr Osborne: Hydro has agreed to freeze its rates through to the beginning of the year 2000, at which point the marketplace will open up. In my view, it would not make sense to impose a freeze at that point because you will in effect be subverting the marketplace. The objective is to have a competitive marketplace where market forces will dictate. We acknowledge that there will have to be mechanisms in place for a transitional period to deal with the so-called market power issue, but once those transitional measures are in place, the marketplace should be allowed to stand and to determine what is the appropriate wholesale rate.

A large portion of the rates will of course be regulated by the OEB because transmission and distribution will continue to be a rate-regulated business and that's a fairly substantial portion of the ultimate rate. The portion of the rate that is subject more to the whims of the market, if you like, is the generating wholesale rate, or the rate that generators charge to people buying wholesale or on a direct basis. The whole purpose here is to create a competitive marketplace in which market forces will dictate. I don't think it would be appropriate in that context to be introducing rate freezes.

Mr Lessard: The minister seems quite confident that rates will go down in a competitive environment. I wonder whether you share that confidence, because in the report, *Electricity Competition: A Financial Update*, it indicates that the amount of stranded debt can be reduced because successor companies will operate more efficiently than their predecessor.

In your remarks you said that Ontario Hydro has been a reliable and efficient deliverer of electricity in Ontario. It seems as though the projections by the minister of reduced rates are based on the fact that Ontario Hydro hasn't operated efficiently in the past and the successors will operate more efficiently.

Mr Osborne: I think it's almost a matter of philosophy or religion, I suppose. I happen to believe that companies that operate in a competitive marketplace operate almost de facto more efficiently. Competition is much better than a regulator can be at ensuring efficiency. Having just come out of the telephone business where we've seen long distance rates, for example, plummet from an average of \$1 a minute to now, if you like, 10 cents a minute and all you can eat for \$20 a month, nobody dreamed of that five or 10 years ago.

I can assure you that in a fixed-cost business with highly capital-intensive business of the sort that electricity is and telecom is, pricing gets pushed towards marginal costing. Undoubtedly, competitive forces will have a greater impact in bringing electricity rates down than any amount of forced regulation.

Mr Lessard: You mentioned the problems you've been having in changing the billing system for your customers. I've noticed in ads in my local newspaper, the *Windsor Star*, the 1-800 number to the call centre to address concerns of customers. It's been tough to get through to that and I wonder where that call centre is located and what the cost has been for the ad campaign and the establishment of the call centre to try to deal with the problems that resulted from changing the billing.

Mr Osborne: There are two call centres that are in reference here, one in London and one in Markham, but I'll ask Eleanor Clitheroe to answer specifically, and to the extent we don't have dollars and cents to satisfy you, we'll get back to you with numbers.

Ms Eleanor Clitheroe: The problems we've been having with the call centre are really regrettable and we are very concerned about them with respect to our customers' ability to get through. Over the summer, starting in June with the conversion of our customer information system and our billing system, a couple of things happened simultaneously. One was the conversion of the system and the other was a series of electric storms that went through the province, so our customer information centres, which are geared to a certain call volume and which we had increased to account for the issue of changing to the conversion, were overloaded with a series of spikes all through the summer that we had not anticipated. For example, we generally would receive somewhere in the neighbourhood of about 5,000 calls a day from around the province in there, and we received on

one day 172,000 calls, so that the ability for the centre to cope with that has not been feasible.

The problems that we experienced there, other than the issue of people calling with respect to the outages on the storms that went through, were really three-fold, all of them issues of concern to us and to the customers. One was the issue of changing the due date which the customer is to pay the bill on. We had looked at industry practice and had announced the change prior to, and then implemented the change on, the June bill, moving from 21 days to 16 days. We have, due to the customer reaction, subsequently reversed that decision, and that will be effective for bills that come out after the September 1 ability to change the system and we will be answering calls around that to that effect. However, the changing of the due date has generated a lot of calls and questions and queries for people.

The second issue affected a smaller group of customers but was a very confusing issue for customers, and that was primarily cottagers who are what we call seasonal customers. The way the billing system worked was that for the conversion bill alone, as opposed to on an ongoing basis, for the first bill that the system put out for that customer, there was a calculation done back to a year ago. For many of those customers, the ability to read that bill — it was a very confusing bill. It admittedly was a very confusing bill. The literature that we put out around it was an attempt to explain the bill but it was inadequate. We are currently obviously answering questions by letter, fax, e-mail and telephone, but we are also putting out additional literature and information for customers to explain the confusion around the bill they got in June. It's a one-time issue. The bill, having gone through the conversion, would not have those same confusing features next time, but it's important for us to explain to the customers what went wrong. There were about 60,000 to 80,000 of our 160,000 seasonal customers who were affected by that particular very confusing issue.

The third was obviously the inability, given the volume of calls to the call centre, to handle that volume. We're looking at a couple of ways of trying to alleviate that problem. In the meantime, we've put in the 1-800 line, which is also still very heavily used, and a taped answering system. We've increased the number of staff to answer calls. We've tried to accommodate the volume of calls but we're also looking at methods of ensuring that we can staff up for emergency spikes like that in the future, as well as to handle the ongoing volume of calls that we would expect on a regular basis.

I actually have a little pamphlet which I've brought copies of here. I'll leave them behind. If anybody has any other questions, more detailed questions, the package is available.

Mr Conway: We're beyond the pamphlet stage, Eleanor.

The Chair: We're moving to the government caucus.

Mrs Johns: Welcome. Although you weren't here, Mr Osborne, for the select committee, a few of us feel like we're in déjà vu all over again. Putting that aside, I'd like

to comment that after having gone through the select committee and having spent a great deal of time on Ontario Hydro over the last year, I'm not as concerned about the stranded debt probably as others in the room are because I believe that the marketplace — the shareholders will either get the benefit, which is all the taxpayers, or however we do that, the allocation will work out to be fair to the taxpayers.

1410

I'm more concerned about the ability of Hydro to become more efficient. We talk daily about how the price is going to go down and part of the reason the price is going to go down is because we hear Genco can efficiently produce more power or Servco can better service the customers. I guess, being the doubting Thomas I am, after having watched the old corporation go through 30 years of this, I have some concerns about whether that can actually happen. I'm interested to hear from you today as the new management team what the vision is for Hydro, how you're going to step up a totally inefficient business to make it something that's competitive and how you're going to move the generation into that, move Servco into this new thing and how we're going to maintain some supply as we go through this time when we haven't got competitors coming forward just yet, but will in the next three, four, five, six years.

Mr Osborne: Thank you, Ms Johns. There are lots of questions in that one question. I'm going to use an expression that I've used in talking to employee groups within Ontario Hydro. We are about to enter an entirely different ball game. In the past, the dialogue around Ontario Hydro was essentially, if you like, how to divvy up a pie that was granted to Ontario Hydro by the PCA to monopolize. In effect, the argument was about how much went to the government, if you like, in the form of accumulated value, how much went to the employees in terms of salaries, wages and benefits, and how much went to customers in the form of reduced rates etc. We were divvying up a pie that was to be granted.

The future of the game is quite different. The dialogue has to be about how you in fact bake that pie because all kinds of other people will be out there trying to bake their own pies. More importantly, they'll be trying to take a piece of ours. I was quoted in the press in a somewhat right-wing fashion, and it isn't really me, but I'll repeat it anyway and our press colleagues can decide whether they want to use it again: "In a competitive business you either eat somebody else's lunch or you are somebody else's lunch."

Mr Conway: Charming.

Mr Steve Gilchrist (Scarborough East): But true.

Interjections.

The Chair: Order.

Mr Osborne: That's an exaggerated way of making the point about the difference between a competitive business and a non-competitive business. You are either, in a sense, predator or prey. I make these points not because they are bang on, not because they exactly pinpoint the

difference between monopoly versus competition, but they certainly give you the flavour and the direction.

In going forward, Ontario Hydro has to act just like any other competitive business. We will have to live by the wits of the people we employ, utilizing the assets which we've been granted, to make sure that in future customers who in the past had to do business will want to do business with us. That's the single, most important thing that Ontario Hydro has to deal with going forward. That's not easy with 92 years of baggage, as you refer to. We have very good relationships with all of our customers, but you can imagine the kinds of tensions that build up over 92 years. Some of it is evident in various position papers put before you, I'm sure. The single biggest thing we have to do is make sure that our people understand that in the future we earn our keep, we haven't inherited it under the PCA. That's the first point I would make.

I would say that we have had very fruitful discussions with our union leaders in this regard. We have completed the first round of negotiations with the PWU. That I guess was made public some six or eight weeks ago, somewhere around that time frame, not without difficulties. Nobody suggests that it's easy or that there's a Pollyannaish solution here, but we did come to, I think, a very good first step towards reordering the relationship between management and labour union membership. I'm hopeful that a similar outcome will occur over the next month or two as we enter negotiations with the society. So 15,000 of our 21,000 people are in a union which has already agreed to a number of important evolutionary steps that will help both us and their members be more competitive in the future, and we're now working on the other union.

The third thing I would say is that in this competitive environment we will have to find ways to make greater use of incentives as opposed to entitlement. Whether it's in the form of profit-sharing or gain-sharing, productivity-sharing, I don't know at this point, it's far too early in the game, and I haven't had a chance to turn my mind to the specifics. But quite clearly there will have to be more of our collective reward as 21,000 people working at Ontario Hydro that is a function of how we perform and not simply just showing up every day, and we will have to have a far greater incentive-based compensation package than we've had in the past.

We recognize that we do not have all the management skill sets that will be necessary. We run very good plant including, I might say, very good nuclear plant. If Carl had a chance, he would tell you that 12 out of 12 nuclear units are running today as we speak and 11 out of 12 operated throughout the past two months when we had such strains put on the system, and the 12th was simply out because of a planned maintenance outage. We are in fact seeing improvement on that front. We run very good hydroelectric and fossil plant. We run good transmission and distribution systems.

I suspect where we are going to need help on the management front is in understanding the dynamics of a more competitive marketplace and particularly how to do business with and against those intruders, if you like, from

the south, the large American generating companies that will be coming over our border just as we attempt to go over theirs. We realize that we're going to have to beef up on the marketing and strategic fronts within our generating operations, and John Fox and I are strategizing on how we go about that.

At the end of the day the single most important thing, though, that will make a difference to our bottom line is getting all of our generating assets running at full tilt at the highest possible capacity factor, because with our natural advantage with the type of plant that we have we believe we can (a) be competitive in Ontario, but (b) export surplus power that will be created by the competitive marketplace into the United States where we believe we have a great opportunity to make money on behalf of the shareholders.

Mrs Johns: I'm going to pass on to my colleagues but I would just like to say that part of successful business is having good market relationships with your customers too and I don't think the billing was a good step into the right direction from an MPP's perspective.

Mr Osborne: Well, I'm glad it happened two years before the market opened.

Mrs Johns: I hope it doesn't happen again.

Mr Osborne: So do we.

Mr Galt: Thank you, Mr Osborne, for a very competent presentation. Just focusing in on the last two pages, if I may, the first question relates to equivalent access or reciprocity and this being a provincial bill becoming an act. I'm wondering what some of your thoughts might be in legislation to make it work and/or in regulation that might make that work. I think it would tend to be more of a federal government area, but I'm curious as to your thoughts on how we can make that work.

Mr Osborne: I guess it's probably a three- or four-party effort we're talking about here because you're absolutely right. There are issues of interprovincial trade attached to this which involve not just this province but other provinces as well as the federal government. As you know, there is a draft agreement on interprovincial trade and energy which is under review right now and which I suspect a number of you have been exposed to, and in that context I think it would be very important that issues of reciprocity be appropriately addressed. There are also issues north-south under, I guess, more NAFTA and FTA than GATT, but nevertheless on the international trade front there are a variety of restrictions and encouragements on how countries will do business with each other.

Interestingly enough, as we sit here today, there is an agreement on energy as part of the NAFTA and FTA rules with the United States that does not directly countenance reciprocity. It countenances something called national treatment. I'm not a trade lawyer and I don't want to get into the specifics, but it does not specifically countenance reciprocity.

Having said all that, we have been prevented from having what is called a FERC licence, which is the equivalent of an OEB licence in the United States, precisely because of reciprocity issues. This is not an uncommon

trade. I can give you many examples of foreign jurisdictions, including our good friends to the south, using reciprocity issues in the telephone field, for example, against Canadian companies.

1420

I don't profess to understand all the legal manoeuvrings that are possible or not possible, as the case may be, through interprovincial and transborder negotiations. All I know is that everybody else is going to be looking at reciprocity and we better look after ourselves. I don't wish to demean the Boy Scout movement, which I'm just about to do, I guess, but I'm fond of saying we don't want to be the Boy Scouts in this process unless everybody else is going to be a Boy Scout in the process. I think it's very important that we look after our own interests. We will import power; we want to export power.

Mr Galt: The second question is on page 7, the second paragraph, relating to liabilities. You talk about future nuclear waste disposal being in the current rate structure. I'm a little confused there. Going back to the Hydro select committee, my understanding was that nuclear waste disposal was put on hold and out in never-never land, and we really didn't know what that cost was going to be. You're changing my feeling. Either it's in that \$31.1 billion or it's in the billing; therefore, if it's in the billing, you must be billing your reserve someplace. I don't follow your comments here. I need some explanation.

Mr Osborne: It's not in the \$31 billion. That's the first thing.

Mr Galt: I was pretty sure of that.

Mr Osborne: We have been including in our cost-of-service calculations what I'll call an amortized estimate of both nuclear decommissioning and nuclear waste disposal. They are two different issues, as you know, the costs. The way those are calculated is essentially as follows: One estimates the final waste disposal and nuclear decommissioning cost at the end of a nuclear plant's life. One then spreads that cost over the life of the plant and amortizes it in a fashion in which you have gradually inclining annual charges to the cost of service which allow for the amortization, plus the accumulation of an investment return on previous allocations. That amortized cost is charged to the income statement and into the cost of power under the old technique. We have approximately \$3 billion in our balance sheet that's been accumulated in this fashion. That \$3 billion — I think it's actually \$2.9 billion — has therefore been billed into our cost of power and our rate structure in the past.

Mr Galt: That's in an investment or a bond or set aside?

Mr Osborne: No, it's simply invested in the assets of Ontario Hydro. There are two ways you could do this. One is you could set up a segregated fund and put it in government of Canada bonds, government of Ontario bonds, shares of Bell Canada or some reliable company like that, and allow the income to accrue on that segregated fund, or instead you could invest those funds back into the assets of Ontario Hydro and in effect reduce the funding requirement for ongoing operations.

Mr Galt: Then it goes back into the \$31.1 billion.

Mr Osborne: Well, had we set up a segregated fund, we would have had a debt of \$34 billion, roughly, and we would have had an additional asset of \$3 billion sitting in the segregated fund. That's how it would work. So in effect the \$3 billion has been reinvested within the asset base of Ontario Hydro, not set up in a segregated fund. Going forward, there will be a debate as to whether or not there should be a segregated fund. That's an issue that undoubtedly this committee will hear about and it's one that is being dealt with by the Ministry of Finance.

The Chair: To the official opposition.

Mr Conway: I'll be sharing my time with my colleagues. I want to welcome the deputations.

Mr Osborne, it has now been nine months since the government of Ontario released its white paper outlining the policy framework that would guide the competitive marketplace in electricity. You are the new CEO of Ontario Hydro and you have at your disposal considerable resources. My first question to you today is, nine months after the white paper was released, can you tell this committee what your best estimate is within Ontario Hydro today as to the amount of debt that Genco and Servco could be realistically expected to carry into this new world of competition?

Mr Osborne: No, I'm not in a position to do that today. There are still too many factors that have to be determined. The major factors clearly have to do with market design and —

Mr Conway: So you can't tell me today. Because time is short, when would you expect to be able to tell me and this committee?

Mr Osborne: The answer won't come from me, actually, it'll come from the Ministry of Finance.

Mr Conway: If you can't provide the answer, then that's fine. We'll move on.

Mr Osborne: It will come from the Ministry of Finance at the end of September, October, as I think I indicated.

Mr Conway: You can't tell me today and you really think the Minister of Finance will have to give me that answer. All right.

Second question: Mr Osborne, I'm one of your one million direct customers in my recreational property, so I want to reduce this to a very personal level. You made a very powerful presentation here today, a really powerful presentation that in light of what we've been told by the Market Design Committee and what many expect in this new world order is a truly remarkable presentation.

All of that aside, I've got a very direct question for you. You've got me now; I suspect, since my cottage is deep in the hardwood bush of the central highlands of Renfrew county, that you're probably going to keep me. Today, I pay on an annual basis approximately \$1,450 for the service I receive. I must say, unlike my friend Mr Phillips, who has had a bill in recent times, one of those remarkable bills — and Eleanor, you should be so lucky that we're being as polite as we are. But I'm not like Mr Phillips, because, you see, I can't get a bill. I keep

phoning Hydro and asking for a bill that I'd like to see and I want to pay. Despite my several calls, I can't get a bill.

But let's set that minor irritation aside. You've got me and you're apparently going to keep me and you want me and you want to serve me well and you want to give me benefits. So, Mr Osborne, my question, as a customer, is simply this: It's the summer, August 1998. My current baseline annual bill is \$1,450. Assuming you keep me and assuming there's nothing really dramatic that happens, what's my bill going to look like three years from now in the year 2001? How much of a discount am I going to see on my residential bill at the cottage, a bill which is now \$1,450? Assuming no change in consumption pattern, what's that \$1,450 bill going to look like in the year 2001?

Mr Osborne: If I could honestly predict that with accuracy, I wouldn't need to work for a living. I would be able to speculate on various markets and make a killing out of my prophetic capabilities. What I can tell you is that rates will be lower in a competitive, deregulated marketplace than they will be in the kind of structure we have today. That's what this bill is about. This bill isn't about, as far as the legislation itself is concerned, trying to predict with accuracy specific rates on specific dates for specific issues.

Mr Conway: I'm happy to have a ballpark.

Mr Osborne: We're trying to create the framework — maybe I could just finish my answer.

Mr Conway: I want some answers. I need answers. You're a chartered accountant, Mr Osborne. You're a fellow of the institute. I'd ask you this: As a chartered accountant, what would you advise a client, given this set of circumstances? I like the policy, I just want to see some measurable benefit. You can't tell me the stranded debt. Nobody can tell me the stranded debt. You can't deliver a bill. They'll tell me two or three years from now — well, it's no joke. I've got hundreds of constituents, I'll tell you, who'd like to be in my place today. They'd raise a hell of a lot more hell than I'm raising now.

I want to know what the benefits to the residential and farm customers I represent, a million of whom generally you serve, are going to be under this policy two or three or four years from now. I need something more than a hope and a prayer. I need something more than a leap of faith, notwithstanding the fact that I'm a Catholic and I'm told to believe in miracles.

Mr Osborne: I would advise your client that he or she should support a competitive marketplace because that will ensure a far lesser likelihood of the kind of screw-up that we had two months ago with the billing system than we had under the monopoly regime in the past, because the reality is that it's competition that keeps people on their toes, that makes them do a better job. I will assure you that we will get you a bill very quickly.

1430

Mr Conway: The Market Design Committee, a group of good people, has given this Legislature a report four weeks ago and in that report they make it clear that the single biggest impediment to a genuine competitive

marketplace is the kind of market power that Genco is going to have into the foreseeable future. The government specifically forbade the Market Design Committee to unbundle, to disaggregate, Ontario Hydro beyond Genco.

I ask you as a final question before turning to Mr Phillips, given your belief in a competitive marketplace, how am I to square that belief with the Market Design Committee's very blunt warning that your market power going into this brave new world of competition is probably the single biggest threat, in the short and intermediate term, to getting the kind of rate benefits that all of us want to see delivered, particularly to regular Ontarians?

Mr Osborne: I would step back and I would say to myself, "This legislation is designed to do three things." It's designed, clearly, to create a competitive marketplace. It's designed equally to ensure that we have an orderly transition under which the successor companies have a reasonable chance of being successful in a competitive marketplace. Thirdly, this legislation is designed to create the framework within which the existing debt of Ontario Hydro, as we've just discussed, will be paid off in an orderly and expeditious fashion. This is inevitably a balancing act of three, to some extent, differing objectives.

Quite clearly, one of the key objectives, as I indicated in my initial remarks — and we at Ontario Hydro clearly endorse this — is to ensure that we have successor companies that have the critical mass and the wherewithal to in fact be major players when the dust has settled and the competitive marketplace has unfolded, not just in this province but in the northeastern region of the United States. That will require us to use our best wits and intelligence and our best efforts to redeploy those assets over a period of time. You will not have the best utilization and redeployment of those assets by holding some kind of a fire sale.

We will, over the next few years, be inevitably incentivized by the very report you refer to, the Market Design Committee report. We will be incentivized to have our market share in Ontario go down and it is our intention that we would replace that lost market share with market share outside this province. That will be done through a variety of techniques that are referred to in that document. Those techniques are under review now, as we speak, with the Ministry of Energy and the Ministry of Finance. They include vesting contracts, leasing contracts, out-and-out swaps of assets or productivity of assets over time. Quite clearly, over time, we will create a marketplace where Ontario Hydro is no longer 86% of the generation in this province.

There is no way that you can go from a monopoly situation to a fully open, competitive marketplace without some kind of transitional period in a framework in which you have to satisfy all three objectives that I've referred to. It's taken 10 years for a fully competitive telecom industry to unfold. It even goes back further than that, 15 years, in the United States, to the creation of MCI and the breakup of AT&T. It didn't happen overnight. The issue is to create the framework which will allow market forces over time to create the competitive marketplace that will

answer the kind of questions you were putting to me earlier. It will keep our feet to the fire at Ontario Hydro and will keep all of the competitors' feet to the fire.

Mr Phillips: Just a quick question, but first a comment. I must say I'm quite surprised that Hydro had no suggestions for improvements in the bill. Also, I will go on record as saying I am concerned that the chairman is on the board of — a very reputable firm, but I would have asked him this question if he'd agreed to come. I'm concerned about the chairman being on the board of NewCorp, which is a company that I think will be involved in this issue as a competitor of Hydro in the end. As I say, I'm disappointed that you have no recommendations for improvements in the bill.

The minister this morning indicated that Hydro would probably get down to supplying about 60% of the Ontario market with electricity. You therefore are going to have to sell — you said the single biggest thing is to have your generating assets working at full capacity; that's the key. Will you table with us the study that shows that when you've assumed a reasonable level of debt and of taxes, you are still going to be able to produce electricity and sell it in the US at a lower rate than our border competitors? That's the basis of your recommendation here. Will you table with us that study that indicates that?

Mr Osborne: I think what we can table with you in reasonably short order, Mr Phillips, is a comparison that is essentially available in the public domain of our rate structure and our cost structure vis-à-vis our US competitors as we sit here today.

Mr Phillips: With some assumptions on debt and taxes; that's the basis on which you're going to have to compete.

Mr Osborne: We can look at it in the context of the specific question you're asking, but one would have to be careful to make sure that anomalies in capital structures north and south of the border were eliminated from the comparison. But we're happy to provide whatever we can, and we will do so after the event.

Mr Phillips: After what?

Mr Osborne: After this hearing. We'll go back and we'll take a look at precisely the question you're asking.

Mr Phillips: Pretty key, isn't it?

Mr Osborne: It is pretty key. I don't mean to make light of it, but the reality is, we have a lot of nuclear capacity in this province, which Carl is working diligently to improve the productivity on, which by anybody's calculation will have incremental power costs which are significantly below the vast majority of our competitors' south of the border, which are burning for the most part a lot of coal. The incremental costs of coal-fired generation relative to nuclear are obviously much higher.

We also have an extremely efficient hydroelectric plant in this province, and we have fossil plant, coal plant, which relative to our competitors south of the border is not only in relatively good environmental shape — and everything is relative in the environmental frontier, as you understand — but is also extremely efficiently run. There's isn't a plant the size of a Nanticoke, for example,

south of the border. We have cost efficiencies there that are self-evident.

Quite clearly, we will be attempting to ensure through the process of discussions between the Ministry of Energy, the Ministry of Finance, the Market Design Committee and all other interested parties that the ultimate balance sheets that are created for these successor companies do not make us non-competitive. That is the key objective that we have. While we will not be making decisions or determinations of stranded debt or valuation, we will clearly be having input and we will be making our input into those debates. You hit the key on the head: We will be making sure that our voice is heard. This is what will make this a competitive business.

The Chair: Time's up, sorry. Thank you, Mr Osborne, to you and your colleagues, from all of us. We appreciate your taking the time to come before us with your advice and your thoughts on this bill.

1440

GREENPEACE CANADA

The Chair: We'd now like to call on representatives from Greenpeace, please. Good afternoon, Mr Jardine. Welcome to the committee.

Mr Kevin Jardine: My name is Kevin Jardine. I'm atmosphere and energy campaigner for Greenpeace.

Greenpeace has about three million supporters around the planet, about 150,000 or so in Canada, and 75,000 of those supporters are in Ontario. Internationally, we run two major campaigns, one on fossil fuels, another on nuclear power, that are directly relevant to Bill 35.

I appreciate the opportunity to be here this afternoon to address the committee. I'm basically going to be giving a three-point sermon here this afternoon. The main points I want to make are that air pollution, in particular air pollution from coal-fired power stations, is a major threat to human health and the environment; second, that electricity restructuring could increase or decrease air pollution, both possibilities may occur; and third, because there is at least a possibility that an unregulated system could increase air pollution, regulations are needed now as an insurance policy to prevent that increase and to protect human health and the environment.

First of all, to deal with the first point about air pollution being a major problem, coal and oil-fired power stations are a major source of air pollution in Ontario, generating 16% of sulphur dioxide emissions, 12% of nitrogen oxide emissions and 18% of carbon dioxide emissions in 1990. Of these pollutants, only sulphur dioxide emissions from electricity sources has an explicit mandatory cap of 175,000 tonnes, but Ontario Hydro has also adopted voluntary caps for nitrogen oxide and carbon dioxide emissions.

The Inhalable Particulates/Respirable Particulates Strategy Working Group used figures from the Ontario government to estimate that small particles less than 10 micrometers in diameter are associated with 1,800 deaths in Ontario each year, as well as 118,000 cases of bronch-

itis in children, 12,000 cases of adult chronic bronchitis and 64,000 emergency room visits. These fine particles are a component of smog and are created through chemical reactions in the presence of either nitrogen oxides or sulphur dioxide. Greenhouse gases such as carbon dioxide are also a threat to human health because they help create the high temperature days that produce large amounts of smog.

The committee members may be aware that yesterday the US National Oceanic and Atmospheric Administration announced that July was the hottest month ever recorded in the last 160 years in which temperature records have been kept. That's worldwide. In fact, 1997 was the hottest year ever recorded, so this year is already well underway to beating that, and that's one of the contributing factors to the increase in extreme smog events in Ontario.

The Ontario Medical Association has recently produced an excellent report which notes that ground level ozone and fine particles are associated with increased emergency room visits for asthma, especially for children. The OMA concludes that school absences, childhood asthma, bronchitis and chronic obstructive pulmonary disease, as well as increased child death rates, are all associated with air pollution. Moreover, the OMA points out that "this is particularly true of the pollution that follows uncontrolled coal burning."

The existing toll of air pollution on human health is already enough evidence that current regulations are inadequate, but there are also serious environmental impacts. The federal Acidifying Emissions Task Group recently reported that even with existing caps, by the year 2010, "almost 800,000 square kilometres in southeastern Canada — an area the size of France and the United Kingdom combined — would receive harmful levels of acid rain."

They've called for a 75% cut from existing caps on sulphur dioxide emissions. As a result that would, among other things, prevent 830 premature deaths and 2,300 emergency room visits each year, and would produce annualized health benefits ranging somewhere between \$890 million to \$8 billion.

Noting this conclusion, the Ontario Medical Association endorses a 75% reduction for Ontario's sulphur dioxide cap. Applied to the electricity sector, this would reduce Ontario Hydro's current cap from 175,000 tonnes to 43,750 tonnes.

The OMA also recommends that a mandatory cap be imposed on electricity-related emissions of nitrogen oxides of 6,000 tonnes.

Implementing these OMA recommendations would require real, actual reductions in electricity-related emissions, not just reductions in emission caps. For example, looking at the year 1996, sulphur dioxide emissions would need to be reduced by 48% — that's the existing emissions — from 1996 levels, and nitrogen oxides emissions would have to be reduced by 83% to meet the OMA's proposed emission caps.

Instead, as we all know, Ontario Hydro's emissions have increased dramatically since 1996 because of serious

problems with its nuclear facilities. For example, production at the coal-fired Lakeview thermal generating station has increased two and a half times since 1996. That's the station which is located just on the border of Toronto. According to the Environmental Commissioner, emissions of several air pollutants are expected to rise province-wide by about 70% between 1996 and 1998. It's very clear that we have a serious problem with the current emission system and we need to have significant reductions.

The next point I want to make is that restructuring could increase or decrease air pollution. Bill 35 could make a major difference in cleaning up Ontario's air. By allowing dozens, and conceivably thousands, of independent electricity generators, the bill could encourage the development of clean, small-scale, decentralized electricity generation such as wind, small hydroelectric, and landfill gas or natural gas cogeneration. Consumers would have the option of choosing to purchase more expensive but greener energy sources such as solar and wind. This is certainly what we are hearing currently from the Ontario government; for example, Minister Wilson's presentation this morning. That is a possible scenario.

Unfortunately, there's another scenario. The cheapest way to generate electricity is simply to burn more coal from existing power stations. Most of Ontario Hydro's coal-fired power stations have excess capacity, in fact large excess capacity. For example, even with its current large increase in production, the Lakeview station is only running at 30% to 40% capacity in 1998. We've heard statements from the president of Ontario Hydro and we've heard statements from members of this committee around the table that Ontario Hydro should be encouraged perhaps to sell off more of its assets, that Genco shouldn't control as much in the future of the electricity system. If someone is going to purchase a coal plant, they're going to want to run it at more than 30% to 40%.

We're also concerned about the potential flood of coal-fired electricity from outside the province. There are companies — for example, American Electric Power — which have special, long-term rates with coal mines, with power plants that are actually physically located right next to coal mines, and that have very low rates and are quite eager to sell into the Ontario market. In fact, American Electric Power has already opened up an office in Toronto specifically for that purpose, to prepare the way for competition, because they think they might be able to sell into this province.

There is a gamble going on right now. We are hearing from the government on the one hand that it could clean up the system, but there are a number of reasons why we might expect that that is not the case. For that reason, and also the reason that the current existing caps on air pollution are entirely inadequate, Greenpeace is saying that the regulations that accompany Bill 35 are extremely important. We would like to see new mandatory caps, substantially lower than the ones that exist currently, introduced for sulphur dioxide, for nitrogen oxides and for

carbon dioxide. We believe these caps need to be introduced now, at the same time as the legislation.

I am going to now move into the third part of my presentation: Why do the caps need to be introduced now? These caps, by the way, should not only be on electricity generators in Ontario but also on anyone who wants to sell into the Ontario market, because we don't want to simply encourage generation to shift to the Ohio Valley in a way that's unregulated.

1450

The reason we need to introduce these caps now is that if we wait, if we allow restructuring to go ahead, if we allow companies like American Electric Power to sign contracts with potential customers in Ontario, there is an enormous possibility that if the government were to introduce these regulations there would be lawsuits, there would be free trade disputes, there would be a situation developing such as developed with Ethyl Corp around MMT. These large American utilities would aggressively oppose any attempt to restrict their sales by introducing new regulations after they have already signed contracts, so it's extremely important that the rules be put forward now, not introduced later.

That's the main point I wanted to make. There are a number of other recommendations in my paper about mandatory disclosure, assistance benefit charge and a renewable portfolio standard. I encourage you to read that, but the main point I wanted to make, and I think it's extremely important, is that we need to see mandatory caps, and we need to see them introduced now.

The government has been looking at a number of options. None of them include imposing caps on generation which occurs outside of the province but sells into the province. They have largely been dealing with something which they call emission performance standards. The trouble with emission performance standards is that they only look at the amount of pollutants generated per kilowatt hour. Of course, as electricity demand increases, pollution will also increase at the same time, so we believe that's inadequate, that we need to see caps and we need to see them now.

The Chair: Thank you very much. We'll go first to the government caucus, to Dr Galt. It's about five minutes per caucus.

Mr Galt: Thank you for the presentation. Interesting, the mandatory caps that you're suggesting; they are certainly very energetic recommendations that you're suggesting there.

I don't mean to be sarcastic with my comments, but organizations such as yours do have to get press headlines, do have to create some protest to raise money, but there's also being productive in working with the regulations and working with the Minister of the Environment. Is it your intent to come to the table to help design some of these regulations that the ministry is currently struggling with, both inside and outside of Ontario?

Mr Jardine: Certainly we'd be happy to do that. In fact, we attended a meeting last Friday with Tony Rockingham to discuss exactly that point.

Mr Galt: And you plan to continue with that activity until these regulations are in place?

Mr Jardine: We are eager to do whatever we can to ensure that electricity caps are as low as possible, both inside government meetings and outside.

Mr Galt: OK. Great. You heard the minister this morning, and I gather from your comments earlier that you're quite in agreement with having pollution disclosure on the bill. Is that a direction that Greenpeace is comfortable with?

Mr Jardine: We've very supportive of having pollution disclosure on the bill. I think it's quite important that people understand the amount of air pollution that their electricity consumption generates. However, we believe environmental regulation is a matter for the provincial government, not for individual consumers, so we shouldn't count on consumer choices to determine the level of air pollution in this province.

Mr Galt: I think it was very capably mentioned this morning by one of the presenters that when it comes to foods, organic foods etc, grown in different ways as a comparison, people do make a choice and do pay more for what they consider more healthy foods. I thought it was an excellent comparison. I would think that would extend into the purchase of electrons as well.

This will be my last question. I thought the presentation this morning that Mr Layton made put forward an excellent and very practical environmental concern. He talked about people not really connecting turning on the switch for the lights or air conditioner or whatever, relating it to another shovelful of coal going into the furnace just up the highway that's producing electricity to run that air conditioner or whatever. I'm wondering what kind of education program you would suggest should be implemented to make people more aware of why some of that pollution is coming out.

Mr Jardine: I think the first amount of education I would like to engage in is with the government, to ensure that electricity caps are imposed. Greenpeace believes that consumer behaviour and consumer choice has an important role to play in reducing electricity and other pollution even further below the level of what human health requirements should be. However, we think the government needs to set the floor, and the floor needs to be in line with what the Ontario Medical Association has recently recommended.

We believe the first, foremost and most important thing the government should be considering is substantial reduction in the current emissions of air pollutants. Perhaps as part of the introduction of these regulations there can be a public education campaign to inform people about why that's necessary, but we don't want to support the suggestion that environmental regulation should be left up to individual consumer choices. Green power is not going to clean up the air. It will help to put more wind turbines on the ground, it will help to put more solar panels up, but it won't shut down dirty coal plants. It's up to the government to do that.

Mr Galt: Do I have more time?

The Chair: There's about three minutes left in the government's time.

Mr Galt: I'll keep going, then. Basically you're cutting the acid gas to a quarter, I think your recommendation is, similar to the other components. In calculating this, you must have come up with some thoughts on how much that would increase the cost of power. In my home, say the bill I'm getting is \$1,000 today. If electricity production went to those levels for importation in Ontario, what would my bill increase to?

Mr Jardine: The difference between dirty energy sources like coal, for example, and cleaner energy sources like natural gas and wind, for example, is relatively small. It's about two cents a kilowatt hour. The electricity system that we are proposing wouldn't deliver the lowest possible rates, but on the other hand it would substantially reduce the number of people who die every year from air pollution.

I would like the members of the committee to remember that it is a saw-off, that we can't have the lowest possible rates and at the same time protect human health and the environment. We do have to make a choice. We are saying that regulations need to be introduced to prevent and exclude the dirtiest plants from getting access to the grid. That doesn't have to result in substantial increases in cost. The next cheapest power is from gas, three or four cents; wind can be five or six cents if it's built in large enough wind farms. Those costs aren't huge. What we like to say is that clean power is affordable even if it's not the cheapest.

Mr Galt: I should assure you that the intent of this government is to ensure that it will not increase over what it is now just because we open up the border and have competition. I think it's interesting to point out, if you were here when the minister spoke this morning, the fact that today it's very easy to import dirty power and it's also very difficult to get green power on to the grid. So just with a simple change in this bill, nothing too fancy, we're going to be able to correct those two problems that pre-Bill 35 has had. We're moving quite a ways in the environmental direction; maybe not as far as Greenpeace and Mr Jardine would like to go, and I totally empathize with your thoughts and your concerns. I think everybody around this table is really an environmentalist and is quite concerned about the whole and the future down the road.

The Chair: I'm sorry. We're going to have to move to the next caucus. Mr Kwinter.

Mr Lessard: It's a good place to cut him off.

Mr Jardine: I do agree, sir, that this bill will allow more access to green power. It will also allow more access to dirty coal, and that's what we have to worry about.

1500

Mr Kwinter: Mr Jardine, I read ahead in your proposal, even the parts that you didn't cover, and I agree with your goal. I don't think anybody would disagree. I think, as you've said, everything is a trade-off, and when you live in an industrialized economy, there are trade-offs. In a perfect world there would be no pollutants and we'd all live long, happy lives without any of these emissions,

but the reality is that we have to produce the things that we do. We have electricity, we have manufacturing and all these things, and there is an environmental cost. What we have to do is try to minimize what that cost is.

You're advocating caps on these various emissions, and it would seem to me that some of them are quite dramatic, where you have 175,000 tonnes and you want to cut it down to 43,000. That is a huge, huge reduction. My question to you is, how practical is that given what it would take to do that?

Mr Jardine: I'm sure there are lots of examples of emission reductions in moving from a dirty energy source to a clean energy source, but let me give you one particular example: moving from coal-fired electricity to natural gas cogeneration. A coal plant is about 30% efficient, so 70% of the energy which is generated just goes up the smokestack. It also produces twice as much carbon dioxide per unit of energy generated as natural gas cogeneration. So if you look at that from just the point of view of carbon dioxide emissions like greenhouse gas, you can go from a coal-fired power station to natural gas cogeneration and get about a 75% or 80% reduction in emissions. If you go even beyond that to wind power or landfill gas, which as I said are more expensive but only by a penny or two a kilowatt hour, you can get emissions which are much lower — in the case of wind, even zero.

It is possible to get substantial reduction in emissions. The Ontario Medical Association isn't crazy in proposing these new caps. They are concerned about human health, and I think everyone in this room should be concerned about the 1,800 people who die in Ontario a year because of air pollution, about the 64,000 emergency room visits, about the 130,000 cases of bronchitis. My father has bronchitis and I grew up listening to him cough sometimes all night, having to leave my parents' bedroom and just spend it on the sofa, coughing and coughing, because of his lung ailment. I understand how much pain that is. I understand what effect it has on families, and I think that everyone around this room should take that into consideration when you are looking at electricity regulation. It's not just a matter of dollars and cents; it's life and death.

Mr Kwinter: I'd like to talk to you about wind power. When we sat on the select committee, we had proponents come forward and advocate wind power. I have been to Holland, where I have seen their windmill farms where they're generating electricity. The experts tell us that there is no question it's a very environmentally friendly technology. The practicality is, could you generate enough power using windmills or these wind turbines to satisfy our energy requirements, and seemingly the technical answer is no. There's no question you can do it in specific cases, and you can run certain facilities that way, but it just isn't practical to fill up the whole country with these things to replace what we have with nuclear, hydro and coal-fired.

Mr Jardine: I agree that there is no one solution to reducing air pollution or even dependent on nuclear plants. In the case of wind, IPPSO can come and give you the

numbers, but according to their analysis the technical potential for wind in Ontario, given the amount of land that's available and the location of the windy areas, is about 6,000 megawatts. Realistically, only about 2,000 or so of that could be considered to be cost-effective; 2,000 megawatts would be more than enough to shut down the Lakeview thermal generating station, and that would go a significant way to cleaning up the air in the greater Toronto area, for example.

It isn't the only thing that's required. If we lowered the caps, that would encourage more natural gas production. If we added a systems benefit charge to pay for energy-efficiency programs, we could use that to reduce our electricity bills and also air pollution. There are a number of things that need to be done, and it's the combination that can get us to where the OMA says we need to go.

Mr Kwinter: Are you advocating mandatory caps or targets?

Mr Jardine: We're advocating mandatory caps. We have just heard from Ontario Hydro that in the new system they intend to be predators, not prey. Only mandatory caps will mean something in a privatized competitive market.

The Chair: Thank you. To the third party.

Ms Churley: God forbid that Jack Layton would want me to correct the record for him, but he's not here to do it himself so I want to do that, because the inference made by Mr Galt was that Mr Layton merely suggested that education and labelling would be the answer. I don't think Mr Galt meant to imply that alone, but Mr Layton's concern was that the bill wasn't adequate in terms of making it permissible for renewable energy to come on board under the new bill. They came with recommendations to make sure that the bill be strengthened, to make sure that the option for the renewables be real as opposed to being just on paper, and they expressed concerns about some of the reasons which would in fact keep them out. That was very clear in his presentation. I wanted to just get that on the record. Then he proceeded to make some recommendations.

I want you to comment on the importance of getting the renewables in the door. Certainly I don't think anybody here believes that wind power is going to solve the problem for us tomorrow. The concern has been, in the past, partly because of the Hydro debt — I well remember from when we were in government the difficulties of allowing the renewables and the cogens and all of those to come on board. As you said, this is an opportunity now, as we change the structure, to allow them in the door in a very realistic way.

Besides lowering the emission caps or actually strengthening the emission caps and putting them on in some cases where none exist, what else needs to be done? How would you strengthen this bill to make sure that the renewables are actually invited in and get in the door?

Mr Jardine: There are three things I didn't get to in my oral presentation that are listed in my written comments. Number one is that we need to have on-bill disclosure so that people can actually see the emissions from their electricity consumption. That will help to drive

the green power market. But we don't believe that's sufficient.

Number two is that we need to include the research and development for experimental renewable energy sources like photovoltaics, for example, in a systems benefit charge. Ontario Hydro has been doing good, useful research on solar power, on fuel cells, on a number of projects, and we believe that a very small charge, perhaps raising \$100 million or so a year, could be enough to finance energy-efficiency programs and research and development into longer-term green power sources.

The third thing that we think is very important is the renewable portfolio standard. That has actually been recommended by the US Department of Energy as a thing that should be taken into consideration as part of the restructuring that's going on now in the United States. The idea there is that if you wanted to sell into the Ontario market, you would have to include a certain percentage of green power in the portfolio that you're offering your customers. In the United States they have proposed a portfolio of 5.5%, but they don't include hydroelectric for reasons that I find a bit puzzling.

We're proposing that the Ontario program adopt the federal environmental choice definition of green power, which also includes environmentally sustainable, small-scale hydroelectricity, and because our definition is a little bit more flexible, that the portfolio standard be moved up to 10%. That would enable the renewable energy industry to really take off in this province in a way that I think individual consumer choice may not. I'm not personally convinced that 10% of the population is prepared to spend very large amounts to subsidize, to buy 100% of their power from wind, but I think a large number of people would be prepared to spend just a little bit if they knew that the cost of renewables was spread evenly and fairly across the province. After all, everyone benefits from reduced air pollution, so why not have everyone pay a small amount extra to kick-start an energy industry which will provide emissions-free power to the province.

The Chair: I'm sorry, we're out of time on this section. On that note, on behalf of each of the members of the committee, I thank you for coming before us with your ideas and suggestions for the bill. They're much appreciated.

1510

MUNICIPAL ELECTRIC ASSOCIATION

The Chair: I would now like to call upon representatives from the Municipal Electric Association, please. Good afternoon. Welcome.

Ms Pauline Storks: Madam Chair and members of the resources development committee, good afternoon. My name is Pauline Storks and I'm here in my capacity as chair of the Municipal Electric Association. I also serve as a commissioner on the Clarington Hydro-Electric Commission. With me today are MEA's president, Bob Lake, who is the general manager of the Peterborough Public Utilities Commission; and Tony Jennings, the

MEA's chief executive officer. They will be available at the end of our formal remarks to answer your questions. I will not read our brief in its entirety since we have provided you with copies. I will simply give you the highlights.

Our members serve on the front lines of the public power industry in this province. They operate on a not-for-profit, businesslike basis and fulfill a mandate to provide a safe and reliable supply of low-cost electricity and quality service.

Ontario's local municipal utilities have a long history of public service. We don't mind being a Boy Scout or a Girl Guide, and as a little old lady I don't mind being helped across the street. Our years of experience in the electric utility business mean that we know our business. We know our customers and we also have strong views on how the industry should be restructured in the best interests of those customers.

The MEA and its members aren't newcomers to the debate about electricity industry restructuring. In fact, we began to examine why and how the industry needed to change back in 1992. As we refined our approach to reform over the course of the next four years, we did so with one important first principle in mind, which is simply this: The MEA and its members believe that any electricity industry reform in Ontario must be in the best interests of all the province's electricity customers. That means that making the industry more competitive, a position we wholeheartedly support, should deliver real benefits in the form of lower rates or at least the potential for lower rates. It's a message we intend to continue to deliver as this bill winds its way through the legislative process. In fact, in our detailed analysis of the legislation, we used the best interests of customers as the benchmark against which we assessed Bill 35.

While we applaud the government for taking on the very complex and challenging task of reinventing the industry, we still believe the legislation does not go far enough to meet the needs of Ontario's electricity customers. We have a number of detailed policy observations and will be seeking a series of amendments or clarifications to the bill. These details will be available in our written submission to the committee, which will be delivered by the August 20 deadline.

Today we'd like to walk you through our view of the big-picture policy issues involved in this bill. The intent is to give you a clear sense of the MEA's position on these issues, given our goal of protecting and advancing the interests of all customers.

Although most of the government's statements on Bill 35 are about achieving low-cost energy for the consumer, this is not entrenched in the legislative language.

For the information of committee members, under similar circumstances other jurisdictions have legislated a price reduction for small customers. The promotion of low-cost energy is important and should be explicitly included in the purpose section of the Electricity Act and in the objectives section of the Independent Market Operator, IMO, and the Ontario Energy Board, OEB.

Given the complexity and lack of detail in the bill and noting the litigious nature of the transition in other jurisdictions, this change would provide lawyers, judges and regulators with a critical touchstone for use in decision-making.

Let me move on to an issue that has received a great deal of attention to date and is directly related to low-cost power. The issue is Ontario Hydro's market power, or its continuing ability to dominate the generation sector through its successor company, Genco.

Generation of electricity accounts for about 70% of the cost of electricity. In contrast, the distribution and transmission sectors each account for about 15% of the cost of power. Generation is the one sector where monopoly functions need not be continued and thus is most susceptible to improvements through competition. With these facts in mind, it has always been clear that making the generation sector more competitive represented the biggest and best opportunity to provide savings, which could then be passed on to the customers in the form of lower rates.

For this reason, in jurisdictions around the world the generation sector has always been the primary target for aggressive restructuring. Here in Ontario, however, instead of opening up this sector to real competition within the province, the government has chosen to maintain one large monopoly-like generation company.

Ontario's transmission ties are very limited and cannot be expanded quickly or extensively. No matter how extensive the financial trading in electricity becomes in the next year, at least 80% of the electrons used in Ontario will be generated in Ontario and paid for at prices the generator demands.

Genco's very size and stature within the Ontario marketplace preclude the entry of significant new players in generation. In turn, fewer new and significant market entrants mean less competition. More importantly, less competition means that lower rates are less likely.

To date, however, despite acknowledging the legitimacy of these concerns, the government has chosen to not entertain the obvious solution to this problem: that of further unbundling Genco into a number of individual, publicly owned companies as a means of generating more competition.

The government has asked the Market Design Committee to find other ways to mitigate Genco's market power. The MEA has a couple of members who sit on this committee and we're pleased to assist in developing mitigation options, even though they are acknowledged to be a second-best solution.

We think there is an opportunity to strengthen the legislation in this regard. Our recommendation is that the bill entrench a review of the status of Genco within a two-year time period. If it is revealed that the company's market power continues to pose a threat to real competition, the legislation should allow for the further unbundling of Genco.

A number of new taxes and charges against municipal electric utilities are anticipated by Bill 35. Municipal electric utilities accept that they and all their customers

must pay their fair share of stranded debt. That includes utilities, and large and small customers alike. As such, we don't object to making payments in lieu of taxes until this debt is retired. What we do not support, and what every customer in this province would object to, is the subsequent entrenchment of these special payments as new taxes.

Right now that's what Bill 35 says, that these new taxes will continue to be collected from local utilities even after the stranded debt is paid off. Continuing payments cannot be justified from a customer interest perspective because they mean, very simply, that the customer will have to pay more than they should for their power.

On the issue of taxation and a level playing field, the MEA contends that municipally owned distribution companies, which the legislation dictates must incorporate under the Ontario Business Corporations Act, or OBCA, within two years of the new act coming into force, should be subject to the same tax, or tax-equivalent calculation, as any other OBCA market participant.

1520

In this context, what the bill calls the adjusted gross revenue special payment being levied against local utilities seriously disadvantages these utilities in their bid to compete with new players. As such, we are asking that this special payment or tax be eliminated in the interest of maintaining a level playing field and customer benefits.

We'd like to address another significant competitive issue for local utilities. While Bill 35 requires that municipally owned electricity distributors and their affiliates compete in the electricity industry, it then places restrictions on the kinds of businesses the affiliates can engage in.

What we want this legislation to stipulate very clearly is that the competitive businesses associated with local utilities must be able to pursue the same activities that other competitors and Ontario Hydro's successor companies can pursue.

Right now, under the provisions of Bill 35, this is not the case. Local utilities should certainly be allowed to enter all forms of energy and telecommunications businesses.

By imposing restrictions on local utilities, this bill restricts the benefits that local ratepayers, taxpayers and local municipalities can derive from these municipally owned companies.

The next issue we want to review is the impact that Bill 35 will have on the ability of municipalities and local ratepayers to control their local electricity assets.

The MEA has always maintained that utilities should be controlled locally in order to ensure that they are accountable to their ratepayers.

One of the traditional and critical ways municipalities have exercised local control is through the granting of electricity franchise rights. Under Bill 35, municipalities lose this right to the OEB. While we support an expanded role for the OEB in the new competitive market, the MEA believes that the municipality, on behalf of its ratepayers, should continue to have a say in who serves them.

Another aspect of local control compromised by this bill is the issue of utility boundary expansions. One of the clear intents of this government is to encourage the amalgamation of local utilities.

There were many studies, initiated by local utilities, underway before this legislation came into being. A good number of them were proceeding under the terms of Bill 185, which in basic terms laid out the rules for accommodating utility boundary expansions.

Unfortunately, one of the provisions of Bill 35 is to repeal the Power Corporation Act and its provision allowing for municipal electric utility service area expansions. One such restriction is that expansions must be negotiated on a case-by-case basis with Ontario Hydro.

Given that Ontario Hydro continues to be in the retail business, in direct competition with local utilities, it seems unlikely that Hydro will be either ready or eager to support such expansions.

The MEA therefore requests that the requirement for the transfer agreement with Ontario Hydro be removed from the legislation.

We are also suggesting that boundary expansions be allowed to proceed where local utility commissions have passed expansion bylaws by the date of the proclamation of the bill.

Another area of significant debate revolves around the issue of the separation of distribution and transmission functions of Ontario Hydro. Under Bill 35, which creates Servco, there is no such separation.

The MEA has been assured by energy ministry officials that the OEB will ensure that abuses such as cross-subsidization between transmission and distribution are prevented. Cross-subsidization within Servco could seriously disadvantage local utilities and their customers.

Once again, an Ontario Hydro successor company would be in the position to abuse its market power and manipulate the market in its own favour.

For this reason, the MEA is recommending that the legislation be amended to clearly separate these two functions into two separate entities.

As noted earlier, leading jurisdictions around the world moved to restructure their generation sectors before they took aim at the retail or distribution sector.

The economic rationale for this approach is that the biggest potential savings are available by making the generation sector more competitive, given that it accounts for about 70% of the costs all of us pay for our power.

There are also technical reasons why these jurisdictions proceeded more slowly on retail restructuring, some of them relating to the complexity of introducing competition in a way which (a) would not cause undue disruption to the system and (b) would actually deliver real benefits to smaller residential and commercial customers with limited buying power.

In Ontario, the government rejected a staged approach to restructuring. It is taking the opposite approach of those taken by competing jurisdictions, by moving ahead aggressively on the retail side of the equation.

Based on the examples of other countries and states, we think it's safe to say that this is a somewhat risky approach. After all, in the UK and California, they've been working on retail access for eight and four years, respectively, and still haven't fully implemented it in either place. To expect that Ontario could achieve in 18 months what the UK and California haven't been able to achieve in eight and four years may be unrealistic.

That being said, there are steps that we can take as a province to try and achieve an orderly transition to retail competition in the time prescribed by Bill 35. Our collective goal should clearly be to protect the interests of our customers over this period. The MEA has a couple of recommendations in this regard.

First, the bill should stipulate that any supply contracts signed by customers prior to a retail business being licensed by the OEB should be deemed invalid unless confirmed again, after the market opens for competition, by the parties. This provision will help protect customers from unscrupulous energy brokers.

At the same time, we believe the act should mandate that retail access pilot projects be undertaken to test the market and ensure its readiness.

Finally, we believe that a one-year transition period to full and open access retail competition should be set once the market has been declared ready.

The MEA has also advocated, along with a number of other stakeholders, for a government-executed public information program. Such a program should be dedicated to helping Ontarians understand the changes to the electricity system and how these changes will impact on them as customers.

Let me end by saying that the MEA and its members applaud the Ontario government for taking on the very complex and challenging task of reforming the province's electricity industry. That being said, we have outlined some serious concerns and offered what we believe are constructive suggestions to make this a better piece of legislation. We would urge you as legislators to carefully consider the "best interests of customers" benchmark the MEA has established when you are assessing Bill 35.

Thank you for the opportunity to address the committee. We would now be pleased to answer your questions.

The Chair: Thank you. We'll begin with the official opposition. There are about three minutes per caucus for questions and answers.

Mr Conway: Ms Storks, Mr Lake and Mr Jennings. I appreciate your presentation. There is virtually no time so let me just observe and ask you to comment. I've known most of you for some years and I've thought of you as many things but I've never thought of you as Ron Osborne's lunch. I have to tell you, I'm still kind of trying to recover from the remarkably aggressive presentation we just received from Ontario Hydro.

In many respects, I think most of us who have been around this debate were expecting, particularly in southern Ontario, that by and large this rationalization was going to see, consistent with movements that had started with Bill 185, that there would be fewer MEUs, that they would be

larger, that they would be more dynamic and hopefully more efficient, but that the retail company that is Ontario Hydro would substantially recede from much of southern Ontario.

What we have here today is confirmed in a conversation I had with some senior Hydro people the other day: that the plan of the new Hydro group is an aggressive expansion of Servco, the retail company, in southern Ontario. Eat or be eaten, I think was the phrase; prey or be preyed upon, and the Hydro people today made it plain they do not intend to be your lunch.

Having said that, I'd like you to comment. Are you surprised at the apparent posture of Servco particularly to aggressively expand the retail company in southern Ontario, or is that what you expected this competitive marketplace would mean for many of your customers?

1530

Mr Bob Lake: The relationship between Ontario Hydro and the municipal utilities, in my opinion and generally all utilities, has deteriorated drastically in the last three years. Up until the last three or four years Ontario Hydro and the municipal utilities did co-operate on just about every front. If we had some difference of opinion, we usually found some way to sort it out. In a whole number of various areas, and we don't have the time to go into them today, we have found ourselves being at odds with Ontario Hydro in a number of situations, and the epitome of it, I suppose, is the fact that we have in fact taken Ontario Hydro to court and we intend to proceed.

Mr Conway: Bob or Tony, just quickly, how big is the municipal utility rate base in terms of number of customers and in terms of annual revenues?

Mr Lake: Annual revenues are about \$7 billion; customers about two and three quarters.

Mr Conway: It's 2.75 million customers representing an annual revenue base of about —

Mr Lake: About 70% of the province, about \$7 billion.

Mr Conway: Just a final question, then. I'm trying to figure out these new charges. I'm expecting that if I was the Minister of Finance, the charge that I would like most of all in this new basket of hydro taxes would be the one that would give me a slice annually and forever of your rate base. Would I be right in thinking that if your rate base is roughly 2.7 million customers representing annual revenues of about \$7 billion, making adjustments for the regulations, that I would need to have a very big percentage to get myself an annual yield of hundreds of millions of new dollars?

Mr Lake: I think that's why a lot of the private sector have a lot of interest in us.

The Chair: For the third party, Mr Lessard.

Mr Lessard: Thank you very much for your presentation. I look forward to getting more of the detailed suggestions with respect to amendments of the bill.

I can tell you that the members of the New Democratic caucus share your concerns about the government perhaps moving too fast in making the changes they're suggesting and share your concerns that there need to be some

changes to this bill. We've seen past legislation, for example, Bill 160 comes to mind, where even a court judge found that the government had moved too fast and there hadn't been full consideration given to the legislation before it had been pushed through. Where it's all going to end up in the end, only time is going to tell. I would hope we're not going to end up in a similar situation with Bill 35.

Having said that, I have a couple of questions. One has to deal with the issue of taxation that you've mentioned, the entrenchment of special payments as new taxes. You ask that these special payments be ended once the stranded debt has been paid off. The legislation says that the Minister of Finance will be the final arbiter as to when that magical date may be. Who do you think should decide, and should there be some mechanism to appeal that decision by the minister if it ever does get made?

Mr Tony Jennings: Let me try that. I don't think we would object to the Minister of Finance being the decision-maker. The Minister of Finance is responsible for finance. We understand the books of Financeco will be open so it will be fairly easy to see whether things are happening at the right time.

We don't read the bill, unfortunately, as giving the government of the day the choice that Mr Dorey mentioned this morning. That would be one of the detailed suggestions we would make. As the bill is currently written, it gives the government the choice of when to turn that into a tax rather than a special payment. It doesn't give them the choice of whether to turn it into a tax.

Mr Lessard: One final question: If none of your concerns are addressed, are you still supportive of the bill?

Mr Lake: We have no option.

Mr Jennings: We could carry on with what we have today, which is a regulator and a mandatory supplier, saying they were a competitor.

Mr Lake: And going to meet us for lunch.

The Chair: To the government, Mr Gilchrist.

Mr Gilchrist: Thank you, Ms Storks and colleagues. I appreciate your coming before us. A lot has changed in the last year since I spoke to your eastern district, I guess about a year ago now. Let me thank you in particular for the detail you've put into your presentation. These processes work best when people give us some specific direction, and I very much appreciate all of your submissions and we certainly will be considering them all.

Before getting into my question, let me just give you some peace of mind. There are a number of things where perhaps it is just a question of the different interpretation on reading the bill. Under the heading of "Ensure orderly transition to retail access," for example, the legislation already does enable pilot projects to be launched in advance of wholesale change, and a number of other specifics like that. I'm sure we'll address all of your points in detail.

However, in the couple of minutes we have here now I am intrigued at one apparent contradiction in your presentation. You're suggesting that it is appropriate for Hydro to shed some of what you perceive to be its still

near-monopolistic power by breaking up Genco even further. So is it fair for me to surmise, having read your presentation, that you think it's appropriate for greater competition for your suppliers but not for your customers, because you ask for even a further delay beyond the two-year phase-in for the MEUs to set up a corporation?

If we divide the number of customers, you just answered Mr Conway, of about 2.7 million customers, that works out to bang on 10,000 customers per MEU, and I can tell you 10,000 wouldn't even justify a decent hardware store. In today's day and age, with Hydro at a million customers and the average MEU at 10,000, I think it's perhaps not inappropriate to look at it in the light of any other competitive situation out there.

I am intrigued why you would not think the MEUs should similarly immediately — if in fact Genco should be broken up, why shouldn't the MEUs be immediately required — let me take a word out of your own presentation, "benchmarks" — to publish benchmarks so that the customers today could know exactly what the difference in cost would be, depending on which MEU they wanted to buy their power from?

Mr Lake: The costs of electricity are published annually and they are sent around to each municipal utility. They are public information. They are available to Ontario Hydro, if you'd like them. The rates are all over the place in terms of how much they are. Typically, they're quoted in terms of 1,000 kilowatt hours per customer per month for residential customers, and then there are two benchmarks for general service classifications, one of them being about 50 kilowatts in 10,000 kilowatt hours. In the other one, I think it's about half a megawatt.

Those numbers are published now. Our association has a voluntary benchmarking scheme where utilities can participate and send in a whole bunch of benchmarks, not just rates. It can be financial ratios, it can be reliability ratios, it can be turnover ratios for stock, that kind of thing, and it covers every area of operation of the utilities done on a voluntary basis. That way the utilities can compare themselves not only to their past performance, but to the performance of other utilities in the province.

Mr Gilchrist: What would happen if the customers in every MEU were sent that information? Would they naturally want to move their business to the lowest-cost provider, and if that's true, why wouldn't we want to facilitate that?

Mr Lake: Our market information indicates that customers generally will not move from where they're at with their provider, be it long-distance telephone services or cable TV or natural gas, unless there's about a 15% change in price.

Mr Gilchrist: And that would true, comparing Toronto to some of the other MEUs across Ontario, wouldn't it, just as an example?

Mr Jennings: Can I jump in on that? There are two or three things.

First of all, Bob has already mentioned the data that are available and we paid about \$30,000 to Ontario Hydro to

keep them producing that a while ago, because they were planning to stop producing those stats.

Secondly, you talked about the efficiencies. The study the minister quoted this morning talked about 8.5% potential savings from amalgamations. That's 8.5% of controllable costs which are, on the typical utility, less than half of their cost. Their costs are at about 15%, so we're talking 8.5% of 7%.

1540

One of the reasons we've been cautious about retail access is the significant cost of setting up an IMO and other things and whether those can be offset by the gains you can get downstream. That same study, before it was abandoned by Ontario Hydro, was indicating that the optimum size of utilities, based on that analysis, and a similar analysis in Norway found similar things, was 20,000 to 40,000 customers, much smaller than most people would expect. So we've got some caution on those types of things.

Mr Lake: Just to emphasize that point, I once served on a committee when I was employed by Ontario Hydro. I worked for 15 years in what was called the Georgian Bay region at the time and Al Pertula was the director of the region at the time. Our mandate was to find what the optimum size retail operation was because Ontario Hydro at that time had priority small retail operations, some as small as 6,000 customers. The results of our studies were in the range of 20,000 to 40,000.

By way of observation, there's quite a difference between hardware stores and electric utilities. If electric utilities had 10,000 customers, I would estimate their annual revenues to be in the order of \$17 million.

Mr Gilchrist: That's a decent Canadian Tire store today.

Mr Jennings: The other factor that affects it, Mr. Gilchrist, is the way Bill 35 is structured, we're parsing the charges so everybody is going to pay whatever you pay for the 70 cents on the dollar. Everybody is going to pay whatever it is for the 15 cents transmission and everybody's going to pay for the local controllable costs.

The thing that we're competing on is only those electrons that come through from whoever the generation supplier is. The wires are still monopolies either way. They're not competing with each other directly and that's another reason why we don't understand why you need taxes on that for a level playing field because you're not competing for customers, unless we want to have two or three sets of wires going to the same house.

Mr Gilchrist: Don't forget convergence. The technology is out there. I would hope you would not expect to get away from paying taxes if you took on, say, the cable TV business in the town and had a competitive advantage over Rogers or Shaw.

Mr Jennings: We would expect any of the competitive businesses to be on a profit basis. We don't understand how it could be otherwise.

The Chair: On behalf of all the committee members we thank you for coming before us this afternoon with your presentation. We appreciate your advice.

PROBYN & COMPANY

The Chair: I'd like to now call upon representatives of Probyn & Company. Good afternoon and welcome.

Mr Steve Probyn: Thank you.

The Chair: As I'm sure you know, you have 30 minutes for presentation time. I think you're an old hand at this so you know that you can either use it all for presentation or you may allow time for questions.

Mr Probyn: Probably the latter. Thank you very much for permitting me to share my views on Bill 35 with the committee. I'm delighted to be here. I thought I'd start simply by outlining the activities of our group of companies so that you can understand where my comments are based.

We have three businesses: project finance, operations and energy services.

In project finance we work with a group of institutional lenders, led by Mutual Life of Canada, and have assembled a portfolio of approximately \$1.1 billion in independent power finance. The projects that we have financed include natural gas, hydraulic, biogas, wind generation and biomass.

Our operations side includes four plants controlled by our affiliate, the Canadian Environmental Energy Corp, and one other controlled by our lender group, which is a total of 230 megawatts of biomass and gas generation. These facilities are located in Alberta, Ontario, Quebec and Nova Scotia.

In terms of energy services, one of the services that we offer which exemplifies the changing nature of this market is our DTE/Probyn Energy Solutions affiliate. It's a joint venture with a sister company of Detroit Edison and is responsible for developing and implementing utility services to utilities throughout Canada.

A primary focus for all of our activities is a commitment to the environment. One of our group, the Whitecourt biomass generation station, became Canada's first power station to earn the EcoLogo by meeting Environment Canada's most stringent environmental guidelines. We played a key role in the development of Alberta's green power program, working with Enmax Corp, which is the city of Calgary's electric utility, as a principal supplier of green energy.

Turning now to restructuring the electric power industry, we believe this initiative of the government's is one of the most important economic measures it has undertaken in its term of office. This is absolutely essential to compete with deregulating markets across the United States. We see very rapid movement to deregulation both at the federal and at the state level. That means our industries will have to compete with their competitors who are located in competitive markets where they are able to reap the benefits of low-cost competitive electricity.

I'd also like to commend Jim Wilson and his team, both on the political and the bureaucratic side, for what is an outstanding effort in terms of consultation, in terms of working with the various stakeholder groups to build our

consensus. I think it's a testament to the consensus that all of the major stakeholder groups of which I am aware are in support of the principles behind the legislation.

I should add personally that it's an honour for me to serve on the Market Design Committee. We have been chaired, as many of you know, by Ron Daniels, the dean of law of the University of Toronto, who has done an absolutely outstanding job in moving the agenda forward. Our committee produced on-time delivery of its first two reports, and I think we are moving towards on-time delivery of our third report.

I believe, based on what I've seen in that committee, that we are going to make our target of a retail access market by the year 2000. Quite frankly, that's something I was somewhat skeptical about when I joined the committee. Because of what I've seen with the executive and also with the stakeholders — the will to work together, the time after time that parochial interests have been put aside in the interest of moving the reform agenda forward — I believe that this is actually going to happen.

I'd also like to commend Ontario Hydro — and that is, for those of you who know me, an unusual position for me to be in — for its positive role in the process. I think Bill Farlinger deserves a lot of credit for moving the process forward, for taking on board new ideas, many of which didn't actually originate with Ontario Hydro.

I'd like to also stress the stakeholder role. The Stakeholders' Alliance for Competition and Customer Choice has played a key role in the development of both the legislation and the market roles, and I'd like to commend its chairman, David McFadden, for an excellent job.

That having been said, I think we have a major undertaking in terms of public education, and I'd like to associate myself with the remarks of the Municipal Electric Association on the need for substantial public education. It would be a shame if our urgency, which I believe is justified, put us so far ahead of the public that we were not able to communicate the benefits of this important program.

1550

I'd like to speak briefly about Bill 35 and cover some detail.

The new legislation makes no mention of existing IPP contracts with Ontario Hydro. We are of the view that the act should specifically deal with these contracts, given their importance and the fact that they are existing long-term obligations of Ontario Hydro and, in that respect, very analogous to debt instruments that were issued by the corporation. More specifically, the administration of the contracts and the payment of amounts due for the electricity purchased under them should be a specifically enumerated responsibility of the Financial Corp in clause 52(1)(c) of the Electricity Act.

The legislation should not permit the IPP contracts to be transferred to the Generation Corp or the Services Corp or another third party, and if such transfers are made under section 115 of the act — the proposed bill, I should say — the ultimate responsibility for the contracts should continue to rest with the Ontario Hydro Financial Corp.

These contracts were signed with a crown corporation, and it's important to realize that this credit should not be diminished. Financial Corp's obligation under the contracts would continue to be guaranteed by the government as a result of section 53 of the act.

Genco in particular would have an incentive to try and renegotiate or possibly disrupt these contracts since it would be a competitor of the generators in question. So that's an additional rationale for not transferring the contracts to Genco.

I would like to make one point in terms of the lenders' position in these contracts. As many of you are aware, the projects were financed largely with project debt. We made our credit decisions based on off-take contracts that were with a substantial sovereign utility with a AA- credit rating. For those contracts to be transferred to Genco, say, where the Ministry of Finance has announced a targeted BBB credit rating, would be an expropriation in the order of 50 basis points of value, which, given the size of our portfolio, is a substantial expropriation.

In addition, we feel the definition of "stranded debt" in subsection 79(2) should be broadened to specifically identify existing NUG contracts as a Financial Corp liability to be included in the calculation of what is ultimately determined to be stranded debt.

Finally, in respect of the position of the lenders and the contractors, section 23 of the act provides that any contract entered into by Ontario Hydro and a municipal corporation or any other person before a regulation is made under section 45 for the supply of electricity to the municipal corporation or other person ceases to have effect on the day that subsection (1) comes into force. This section should be amended to state that it does not apply to contracts between Hydro and independent power producers entered into prior to the date of the new regime coming into effect.

I should explain that most independent power contracts that I'm aware of actually contemplate the sale of power by Hydro to the independent power producer. This is necessary for black start requirements. It's very important, in fact vital, to us that this provision, subsection 25(3), doesn't sweep our contracts into the general termination proviso.

I would like to say at this point that we have had discussions with officials on these matters, and in general we feel the response has been somewhat positive. I would, however, point out that these changes are critical to the success of this legislation.

First of all, under the common law there is a right to compensation unless the right to compensation is specifically extinguished by legislation. That clearly encompasses the concept of an arbitrary reduction in the credit quality of our security.

Secondly, NAFTA protects US and Mexican nationals from expropriation without compensation, and I should point out that there are a number of US lenders and other participants in the independent power market and their rights would enjoy the benefit of NAFTA protection.

Thirdly, in terms of constitutional law, there is an argument that the province cannot legislate extraterritorially. To the extent that this is an expropriation of a part of our security rights and those bonds are resident extraterritorially, this would subject the act to constitutional challenges.

What I'm saying is that I think we all agree on the nature of these contracts. They are stranded assets of Hydro, not unlike the debt that was incurred to build nuclear facilities. It's important to the lending community that this principle is respected, and I think it's important to the progress of the bill in its entirety that it isn't subject to challenge by a number of parties protected under the common law, NAFTA or constitutional practice.

I would say, just to give you a sense of a solution, and we will be making a written submission later on, that our solution would be simply to exclude those contracts by schedule from the provisions I have described. That would, from our perspective, ameliorate the issue.

The final issue I wanted to talk about is the environment. The act is very supportive of the environment in the sense that it gives the minister many powers to protect the environment. At Market Design we have looked at a number of issues, and the report of the Market Design Committee which was issued at the end of June will give members of the committee an elaboration of some of the key issue areas.

One area where the work has yet to be finalized is in the question of renewable portfolio standards. These standards would apply to entities selling power in the Ontario market. Where one was selling power in the marketplace, a condition of licence would be that a small fraction of overall sales come from renewable energy assets. This mirrors a US Department of Energy provision which is currently proceeding as part of the Clinton energy plan. I believe there are a number of US states which either are in the process of adopting or have adopted renewable energy portfolios.

Why is this important? It's important because our industry is one of the single largest causes of greenhouse gas emissions. We must move to sources which reduce our output of these gases. The public is seeing the effects in terms of climate change, the extreme weather, the changes in economics that accompany these climate changes. We have seen very strong support for Canada's national position in Kyoto, and I believe our industry must not be part of the problem but must be part of the solution. For this reason, a renewable portfolio standard would provide a stop-gap between the current situation and the implementation of emission cap and trade policy.

I believe it is important for us to understand that the competitive market, because of its nature, can mitigate against renewable resources. The intermittent resources have great difficulty bidding into the type of market structure that's envisioned. As well, the renewable resources which are capital-intensive, and most of them are — small hydro, wind, biomass — are "discriminated against." I use that in quotes because it's simply the action of a particular market mechanism — and I believe we

need to take legislative action or, alternatively, administrative action to redress the balance.

1600

Finally, I would also point out that in terms of the environment it's important to look at the overall context. I've long been an advocate of the responsible use of nuclear power and I believe it is critical for us to begin to get our nuclear units back on-line so that we can supplant some of the fossil energy that we are currently using as an alternative. It's only if we move forward and provide a comprehensive program for the reduction of these emissions, both through the rehabilitation of mothballed nuclear plants and the implementation of a renewable portfolio standard, that I think we can be seen by the public as making the kind of motion towards the objective of their environmental goals. So I would commend the committee to moving forward on the implementation of the renewable portfolio standard and other measures necessary to support our greenhouse gas objectives.

That concludes my presentation and if there are any questions, I'd certainly be delighted to take them.

The Chair: We have slightly over three minutes for questions from each caucus.

Mr Lessard: If some of the changes that you've asked for aren't made, is it your anticipation that there will be some litigation as a result of this bill, and if so, what grounds do you think that may take? Would it be with respect to expropriation of your rights or challenging the constitutionality of the bill? What form do you think it might take?

Mr Probyn: There are a number of possible paths that this could take and I outlined three of them. Certainly, for example, NAFTA corporations, US corporations that are investors in these projects would find themselves in a position, if they felt their rights were expropriated, to undertake both administrative action and potentially legal action. There are questions of the rights of contracted parties under common law. All of these are very important questions.

I anticipate that the government will take these comments to mind and will move to ensure that there aren't the grounds for any challenge through ensuring that the contracts remain as ultimate obligations of the Ontario Hydro Financial Corp.

Mr Lessard: Do you believe there should be caps on emissions, caps that not only include generation in Ontario but generation outside of Ontario that supply the Ontario market?

Mr Probyn: Yes, I believe we certainly must maintain our caps. We must bring forward caps on greenhouse gases. I think that has to be a matter of urgency for those in the environmental side of government. One of the problems you have in this field, of course, is that while you're dealing with energy markets, you impact on other folks who are dealing with the environment and they have their own agendas.

In terms of a kind of extraterritorial application of these caps, I'd have to think through the workability of it. The Americans are often accused of applying their laws

extraterritorially to us. Presumably what's sauce for the goose is sauce for the gander, but I'd have to think it through and ensure that we weren't in violation of some of our other obligations.

The Chair: We'll move to the government caucus. We have questions from Mrs Johns and Mr Hastings.

Mrs Johns: I was not going to ask any questions today because I'll get to you later, but I just wanted to reaffirm that the government is going to work with independent power producers to deal with this issue of the existing NUGs. We will be working with you. We will be eradicating any chance of legal issues in the future. We recognize this is one of the problems we're going to have to deal with, so we appreciate your bringing it up and bringing solutions. I'll leave the questions to Mr Hastings.

Mr Hastings: Mr Probyn, thank you for appearing today and for doing some pretty good work on the Market Design Committee.

My question relates to the urgency of dealing with the Energy Competition Act and getting it through the Legislature, hopefully by the end of the year, yet we've heard from some deputants today that they would like to stop the world and get off. We had some of those statements from the vice-chair of the Sudbury Hydro commission. I got the distinct impression that the people who were here from MEA were reluctant partners to the tango, so to speak, that they want to have more time and use orderly transition. They were using that phrase 12 years ago when I was a member of the MEA. Now it's nearly 1999.

Can you state the case as to where we are at the hour in terms of competition from other parts of the world, and if we don't get on with getting this major piece of legislation through, how that applies to jobs and investment as well?

Mr Probyn: I would say that we're late in the game, Mr Hastings. We've gone into this game about three or four years after some of our major competitors, and I'm not simply talking about California. States like Michigan and New York have all taken substantial steps to move forward and are on a track to achieve deregulated markets in much the same time frame that we've set ourselves. So I think it would be a real mistake for us to slow down the momentum. I've seen what happens when you do that, and that is that you become inert very quickly. Inertia is our enemy. We need this.

You'll hear, I think, from industry that they're in a competitive framework. If you look at any of our major industrial facilities, if you look at our automotive industry, they're sitting there and they're always being benchmarked on a variety of factors, in particular energy costs, in competitive markets against plants in Ohio, Florida, California and Michigan. If they don't cut it, they're gone.

I think we've got to realize that we have to really begin to move this agenda. It's difficult. There are issues. It's going to require a lot of late nights and lost weekends, but I think we don't have a choice.

Mr Hastings: In terms of job retention or job creation, could you give us some sort of realistic assessment?

Because we're late into the game, how has this affected job retention or job creation in any of the sectors you have alluded to, or is that not possible?

Mr Probyn: It's very difficult. I've been in the energy policy game since 1973 and I was thinking the other day about the oil crisis of 1973, which is of course another extension of monopoly power, a different type. The move to competitive markets was an article of faith, some would say it was a leap of faith, but people made it and they found that competitive markets worked.

The problem has always been leadership. You can't say, "I've got an economic model that's going to show a gazillion jobs." I'm sure somebody does. They'll come here and sit at this table and say, "I've got an economic model that shows a gazillion jobs." I view those models with a degree of skepticism. I think it's a matter of knowing how to get the economic principles right and applying them, looking elsewhere in the world at electric power sectors such as that in the UK where you have accomplished job creation and reduction in costs that have really been very substantial. That's what we have to look to and I think we have to emulate those examples.

1610

The Chair: To the Liberal caucus, Mr Kwinter.

Mr Kwinter: Mr Probyn, I apologize. I came in just as you were finishing up your concern about the transfer of contracts from the guarantee of the government, effectively — notwithstanding that it's Hydro, but Hydro's debt is guaranteed by the government — to these new companies, which would have a lower rating which would effectively give you 50 basis points of penalty. Is that correct?

Mr Probyn: In effect. What I'm giving you is an estimate. What I'm saying is that if I'm relying on the credit of a AA- sovereign off-take contract, I have one pricing, and if I'm relying on a BBB competitive market player, I've got another. In today's market, my estimate, and I confirmed this with some of my friends in the institutional world just today, is in the range of 50 basis points.

Mr Kwinter: When the minister made his statement with regard to the white paper, I was listening very closely and I got the impression from what he said that the Ontario government would continue to guarantee the debt of Hydro, even after the so-called competitive regime. What would happen is that after the year 2000 they would no longer guarantee any new debt.

Mr Probyn: Precisely.

Mr Kwinter: So I don't see what your concerns are. Even if they transfer so-called stranded debt, what is going to happen is that that stranded debt — we don't know the number and that's one of the questions we've been asking. It ranges from \$15 billion to \$30 billion. If it's \$30 billion, it effectively means that all of Ontario Hydro's is stranded; if it's somewhat less, then it isn't. But it would seem to me that the number that gets transferred is going to have no relationship to anything other than the ability of those two companies, as the president said, from an investment point of view, to carry

that debt. Everything over and above that will be transferred to the so-called transition charge, and that number is just a factor of what they think the other companies can carry. So I'm not certain about why you have this concern.

Mr Probyn: I'm very heartened by the words of Mrs Johns earlier in this presentation. In the legal sense, and I don't want you to take it that I believe the government has this in mind, but for example, as I read the legislation, and possibly I am subject to correction, you could take, say, a contract with Ontario Hydro to supply power over 20 years and you could transfer that to 1234 Corp, which has no substance at all.

So the contractor — and under some provisions of the legislation there is the right to do this without the consent of the contractor — would then go to the purchaser of power and say, "Here's my bill for the power you consumed this month," and 1234 Corp says, "Sorry, can't pay." Effectively that contractual obligation has been constructively expropriated. That's the theoretical concern, the way I see the act working.

I don't see the government as intending to do that and I think the statement of Mrs Johns confirms me in that view, but I feel obliged, on behalf of the lenders we advise, to raise this concern so that the committee in this stage can make the corrections. I've always believed that committee stage is the stage at which, in a reasonably bipartisan spirit, corrections are made. Incidentally, I think one of the things that really impressed me about this legislation is the bipartisan spirit behind it, which is evidenced by the second reading.

Mr Conway: If I can just pursue that, I want to congratulate you, Mr Probyn, and your colleagues, particularly for your work on the Market Design Committee. Since the second reading debate in mid-June, we received this report, which, as you rightly noticed, arrived on time, as did the first.

I was very struck by the cogency of the consensus argument which you as a group advanced around market power. You are right. There is bipartisan, there's tripartisan support, I believe, for the principles of competition and the benefits, presumably over some rough spots, that competition in generation especially is going to bring to all classes of ratepayers.

I'm obsessing, though, with this report because I read this, and you couldn't be clearer as a group. You say that the single biggest impediment to the proper dynamic of the competitive marketplace in electricity is market power. In ways that I would not have imagined, you detail what has gone on in England and in Wales. For example, I was astonished by the data contained in 2.5 and 2.6 about what you found out, seven years in England, as to the behaviour of entities that are not as big — big, Powergen and National Power, yes — as Genco.

According to your own report, which has just arrived, Brealey and Lapuerta did a study in 1996, seven years after vesting day in 1989. What did they find? They found that marginal rates were £700 million above what they should have been, largely because of market power. Then

you go on to talk about Victoria versus New South Wales. You might say, what has this got to do — I think you've given the committee some very powerful evidence. My question simply is — there's something wrong here. We support competition, you support competition, but we are allowing to go forward the one thing you tell us in this report is the biggest problem.

Then you go on to say something else about second measures. I'll end with this and a quick response —

The Chair: Yes, briefly.

Mr Conway: I'm deadly serious.

Mr Gilchrist: Come on. Three minutes ended five minutes ago.

Mr Conway: You say on page 16 of that report that vested contracts are a problem. Why? Because they may very well become non-transparent mechanisms to force a disproportionate share of the stranded debt on to the back of retail customers. So my question is, what about this market power and the failure of this policy to deal with it?

Mr Probyn: Maybe I could explain my perspective as a member of the committee, and of course I was heavily involved in the discussions that led to the publication of the report.

First of all, I think it's important to realize that the committee took as its text the white paper. It was our view that the white paper was attempting, and I believe successfully, to strike a balance between the future of Genco in a competitive North American marketplace and the need for competition.

Having said that, in Ontario the policy is to have a balance between these two apparently opposing interests. The question is, how do we square that circle? I think what we are saying is that the way to square that circle ultimately is to reduce Genco's control over its asset base.

That can be done through a number of long-term mitigative measures. Long-term leases, for example, provide essentially the same benefits in terms of divestiture as outright divestiture. They also address one of the key problems that was referenced by Donald Macdonald in the original Macdonald committee report, and that is this problem of the patrimony of Ontario. If, for example, one is dealing with Ontario's hydraulic resources — they belong to the people of Ontario — what would be said by critics if these were somehow sold off to private interests in order to achieve market competition gains? I think the critics would be saying, "You've sold something that belongs to the Ontario people ultimately and that's a problem for us."

My view is that, for example, leasing out those assets so that they're controlled by private sector operators provides the mitigant to market power while ensuring that these assets ultimately reside with the people of Ontario.

We have a number of other long-term solutions to market power. We said that in the short term we have to ensure — and I'll be brief, Madam Chair — we can move rapidly to meet our agenda. As I pointed out to Mr Hastings, it's very important for us to move quickly to that agenda. We need to mitigate market power and we need to create a process for valuing, particularly Genco, so that it

can receive the appropriate infusions of data and equity. There we looked at the vesting contract as a solution to that.

Because of the cap on prices, and our proposal is a so-called one-way vesting contract, we believe that Genco will not have a short-term motivation to gain the system because they get nothing out of it. That was the logic to the vesting contracts, followed by the longer-term measures, together with the incentives to motivate Genco to achieve those methods.

I hope I've not been a bit long-winded. What I've tried to explain is that the committee believes that this is a viable solution that will achieve the objectives of the white paper and also provide the mitigation of market power that you're looking for.

The Chair: On that note, we've gone over a little bit and I know that some of my colleagues are a bit cross. But I thought that from your Market Design experience you might have an interesting answer because this has come up several times through the day. That was the call of the Chair, colleagues. Hopefully it won't happen on a regular basis.

Interjection.

The Chair: I know. You have a plane to catch. Mr Probyn, on behalf of all the members of the committee I thank you for coming today with your advice and your experience.

1620

NUCLEAR AWARENESS PROJECT

The Chair: Calling representatives from the Nuclear Awareness Project, please; Mr Martin, I believe. Welcome. You have 30 minutes. Please begin.

Mr David Martin: Good day. Thanks for hanging in. You should have before you two things. One is a brief entitled Green Energy: Environmental Aspects of the Energy Competition Act, Bill 35; and separate but appended to that is Recommendations to the Standing Committee on Resources Development. Those recommendations are simply extracted from the longer paper. I don't propose to read through that paper but I would like to make some general comments and then give you a few highlights.

In his statement to the Legislature back in June when he introduced Bill 35 and again this morning, the Honourable Jim Wilson made precisely the same statement. I'll quote it for you. He said: "There is...an unprecedented level of support for the changes that this bill proposes. Public opinion strongly endorses the idea that the status quo is not working." I would suggest that we intuitively know that there's a lot of truth in that statement. For most of my life I've been hearing people say that Ontario Hydro is out of control, that something has to be done, that the problems are just too serious to ignore, and so it continues.

The problem is that in several very fundamental ways Ontario Hydro is continuing to play the same game it has played for the last 40 years and proposes to play that same game in the new millennium in the new restructured

electricity sector. That is, instead of embracing a cleaner and greener world, Ontario Hydro is rededicating itself to, the very status quo that Minister Wilson referred to: the same technologies that have landed it in the current disastrous situation that it's in, namely, nuclear power and coal generation. It can't be denied that phenomenally bad nuclear performance is responsible for Ontario Hydro's current dilemma in large part. The performance of Candu reactors in 1997 was the worst in the world of all major reactor types.

So what is happening here? Instead of turning a new leaf, instead of embracing a green energy future based on efficiency and renewable energy, Ontario Hydro recently decided that it would spend \$22 billion on the nuclear asset optimization plan, the NAOP. It is reinvesting in that same failed technology and it has decided that it will restart the four reactors at Pickering A and the four reactors at Bruce A. "Trust us," says Ontario Hydro. "We can do it differently. We can turn around this disaster. Even though we've never been able to do it in the past, this time it's going to be different."

I refer you to today's *Globe and Mail* and an article by Mr Rusk entitled, "Ontario Hydro's Nuclear-Recovery Plans Lagging." Why am I not surprised? Contrary to what you heard from Mr Osborne this morning, things aren't going well, still aren't going well even under the new American regime in the nuclear division of Ontario Hydro. Things are going just as badly. The same bad decisions are being made now as when decisions were made to build Pickering, Bruce and Darlington.

You've heard a lot about the need for caps on fossil emissions and I certainly echo that need, but I would like to note that it's the failure of nuclear power that's responsible for the current increased use of coal generation. If Ontario Hydro did not intend to restart Pickering A and Bruce A, it would not have made that short-term decision to increase coal generation. Any logical course of action would have dictated that Hydro would have invested in cheaper and cleaner technology than those old, aging, dirty coal stations.

Make no mistake about it as well on the stranded cost issue. Those stranded costs are stranded nuclear costs. Mr Farlinger now claims that stranded costs could be as high as \$20 to \$30 billion. Mr Conway has gone now but he repeatedly asked. We've seen the figures on the table, and the most recent one is up to \$30 billion, according to the chairman of Ontario Hydro, who was absent today. So Hydro is clearly manoeuvring for a larger stranded debt because that stranded debt is essentially a subsidy for its old, dirty, risky nuclear and coal stations.

What about that old status quo? We've heard a lot about market control. Certainly I think Ontario Hydro is defending the status quo in that way as well; that is, by defending its own monopoly in control of 90% of the electricity generation in this province. This is without a doubt the single biggest failure of the current restructuring process and it is quite likely that allowing Ontario Hydro to maintain its virtual monopoly is going to snatch defeat from the hands of victory.

1630

To sum up, Hydro's commitment to nuclear power is at the heart of all of these dilemmas, and the solution, I would argue, is a simple one: Shut down Pickering A and Bruce A permanently. The elimination of those 5,000 megawatts of nuclear power will go a long way to eliminating Hydro's monopoly. In the long run the economic benefits will be huge if, as I would predict, performance isn't going to be restored to the astronomical levels that Ontario Hydro claims it will. And we will have some side benefits. We'll stop emitting radioactive pollutants. We'll stop producing more radioactive waste that we don't know what to do with and we'll eliminate the risk of a catastrophic accident.

I will admit that these issues are political in nature and beyond the scope of the current legislation, but they set the context for this legislation and I think for the environmental recommendations that I'd like to make to you today. They underscore the urgency of those recommendations.

By allowing Ontario Hydro to maintain its monopoly and to rededicate itself to nuclear power and to coal generation, the restructuring effort really has two strikes against it. We can't afford to get the rest of it wrong as well.

I'd like to run through just briefly some of the recommendations and I'd like to start on one in which I join, I note, the city of Toronto, Greenpeace and Mr Probyn, and I'm sure you'll hear a lot more people supporting this measure, and that is a renewable portfolio standard, an RPS.

This is a requirement for generation or retail companies to provide a specific amount of their generation or their sales from renewable sources. It's a very popular and, I would argue, very flexible and market-based approach that could make use of renewable energy credits, so that you could have a trading system. It's in place, as you heard, nationally in the USA. It's now in place and proposed in the European commission. It's in four different American states. It's a way of kick-starting renewable energy to try to compensate for some of the market failures that are blocking its entry into the marketplace.

Similar to a renewable portfolio standard, we support the creation of a system benefits charge. That's an across-the-board charge that would provide funding typically for conservation efficiency programs, as well as for renewable research-development measures. It provides an excellent match for the RPS, again to provide that kick-start. I note again that it's in place, and you can refer to my brief, in a number of states in the US already.

In order to facilitate that system benefits charge, I would argue that the Financial Corp needs to be given a conservation mandate. It's also appropriate to give conservation mandates to the Services Corp and as well, I would argue, to the newly incorporated municipal utilities. It's something that's just absent in the bill, and I think that the objects of those companies need to be amended to include conservation.

You've heard a lot about disclosure and electricity labels. They're a very important matter and I think one in which the Market Design Committee and this legislation deserves significant congratulations. That's all about disclosing, of course, generating fuel sources and emissions, on bills, on advertisements, on all the publications of the retail companies or the generating companies.

I would make one suggested amendment, though, to the bill and that is that the government should not be given discretion in this but should be required to make these regulations for adequate disclosure. I would also suggest and have suggested in my brief an amendment to that particular section so that it should be more explicit that the sellers of electricity should be required to prepare a standard label that must appear in all of their materials and advertisements.

The details of what goes in that label of course are beyond the legislation and need to be resolved urgently so that this can be in place when competition is introduced in the year 2000. That is a point which I can't stress enough.

I do have a beef with the Market Design Committee, and that is that they seem to be getting more than a bit hung up on concerns about verification of green power, so much so that they're talking about the possibility of delaying this labelling and disclosure procedure past the introduction of competition. I think that would be a terrible disaster and would certainly prejudice the entry into the market of green power companies.

You've heard a lot about the need for caps on fossil emissions, and again I'll lend my support there. Caps have to be tough, they have to be mandatory, they have to also be implemented soon and they must address the whole problem of pollution from electricity imports as well as the domestically produced electricity. Timing here is everything. If these caps aren't in place, it's going to prejudice green power in the new marketplace after the introduction of competition, so the timing on this is absolutely urgent.

In addition to separate acid gas emission caps for sulphur dioxide and NO_x , for the first time we believe that meaningful, mandatory caps must be placed on greenhouse gas emissions as well. We would also suggest to you that new caps must be placed on toxic emissions, something which has never been done in this jurisdiction.

These caps all must not only be implemented prior to the start of competition but also, we would argue, they must be introduced before any emissions trading program is put in place. They should, if emissions trading is going to work, also include long-term schedules for phased reductions of those pollutants over time. That's how the trading system is going to be given some real meaning.

In addition to the caps on fossil emissions, we believe there should be caps on radioactive pollutant emissions from nuclear facilities. This can be done. Similarly, under schedule D, amendments to the Environmental Protection Act. Caps should be applied to tritium and to carbon-14 emissions from nuclear power plants, radium and radon from uranium tailings, and uranium emissions from uranium processing facilities. Radioactive pollutants are air pollution just as much as fossil emissions are.

I'd like to wind up on something which I think is extremely important. It has been touched on several times today already, but the dollar figure hasn't been mentioned. I'm talking about the reactor decommissioning and radioactive waste management liability of Ontario Hydro.

In the spring, Ontario Hydro came up with a new figure. It's a staggering figure of almost \$19 billion. That's what they estimate the cost to be. Ron Osborne said very euphemistically that Ontario Hydro has "invested" the \$3 billion that they have collected from Ontario ratepayers for that liability in Ontario Hydro. That's another way of saying they've spent it. It ain't around. The issue here is the creation of a real, independent, segregated fund where that money actually sits and is available when it is needed, as it will be needed, to take apart those reactors when they have reached the end of their useful life, and to look after the management of the approximately 20,000 tonnes of high-level radioactive waste that Ontario Hydro is currently the proud owner of.

A further note: That fund should be collected in a timely fashion. I know that's somewhat vague, but what I'm trying to say is it shouldn't be collected over the next 50 years; it's got to be something a lot shorter than that. I think this enters into the whole question of stranded costs as well. There's a real question as to whether this would be allowed as a stranded cost. We don't think so. We think it should be carried by the generating corporation.

I'll leave it at that. I know I've rushed through the brief but I'd be happy to answer any questions.

1640

The Chair: We'll begin with the government caucus.

Mr Galt: Thanks for your presentation. In your recommendation 1, you're suggesting the closing down of several nuclear stations. I don't seem to be picking up on where you're suggesting we might compensate or get replacement power once they'd be shut down. What is your suggestion?

Mr Martin: Well, they are shut down already. That's point number one.

Mr Galt: Well, we're bringing them back.

Mr Martin: What I'm suggesting is they should remain shut down. Pickering A is scheduled to be restarted beginning in the year 2000, the first reactor, and then the other three.

Mr Galt: With them running, it's the real capacity of Ontario Hydro, along with the fossil plants, along with the hydro plants and along with a bit of green power.

Mr Martin: Are you asking whether —

Mr Galt: If they are left shut down, you're suggesting that we just operate with the fossil fuel plants and continue.

Mr Martin: I'm suggesting that they should be removed from Ontario Hydro's generating capacity, yes.

Mr Galt: And you're only referring to the two A plants?

Mr Martin: Correct.

Mr Galt: You're not referring to Darlington and the B plants?

Mr Martin: No, I'm not.

Mr Galt: Why are you zeroing in on the A plants only?

Mr Martin: Because they're the oldest stations, they have the highest costs and they are currently the subject of a massive rehabilitation program. Ontario Hydro is spending, between 1997 and the time when competition is introduced, almost \$8.5 billion on their nuclear program. I realize not all of that is rehabilitation, but a significant chunk of that of course is being dedicated to Pickering A and Bruce A. It's a very high cost and, certainly in the case of Pickering A, a very high risk in terms of possible accidents. It's a very high-risk nuclear station since, as the oldest station in the country, it doesn't have a second emergency shutdown system.

Mr Galt: You made reference earlier to the liability as it relates to decommissioning and also the storage of spent fuel. I've never come across a very accurate figure on what that might cost in the end. We heard earlier, and you repeated, the approximately \$3 billion that has been collected and then reinvested. Do you have any estimate on what it will cost to decommission the present nuclear plants in Ontario?

Mr Martin: Suffice to say we believe it is significantly more than what Ontario Hydro is suggesting. We believe it could be two to three times as much as Ontario Hydro's most recent estimate.

Mr Galt: And their most recent estimate is?

Mr Martin: Their most recent estimate, as of April, is \$18.7 billion. That's for both decommissioning and high-level radioactive waste management.

The Chair: Moving to the Liberal caucus.

Mr Conway: Could I just yield to the New Democrats and then we'll come back? I apologize for having to run out.

The Chair: OK.

Mr Lessard: I appreciate your suggestions with respect to conservation efficiency initiatives, not only by the Financial Corp but the municipal utilities as well. It's one thing to put those in the objects but it's another thing to actually be able to achieve those. How is it that you suggest those conservation efforts be implemented? Is it through some sort of incentives? What do you have in mind there?

Mr Martin: Certainly with respect to the system benefits charge we're suggesting it could and should be collected by the Financial Corp in the same way that it will collect the charge for the stranded debt. Those moneys would be collected and should be turned over to some other implementing agency. It could be an existing agency such as the Ontario Energy Board or even the Ontario Ministry of Energy or it could be a new entity created for that purpose. I would certainly suggest that the delivery mechanism would be private sector companies, energy service companies that are out there in the marketplace ready and willing to do this work.

Mr Lessard: Chair, can you tell me how much time we have?

The Chair: You have time for one brief question.

Ms Churley: Thank you very much for your presentation. I just wanted to ask you quickly about the suggestion that Pickering A and Bruce A be permanently shut down. What would you see in the immediate and long-term future of power provision in Ontario with those plants not in service? As you know, a concern in the immediate future, right now, is using dirty coal. That is one of the problems we face. What do you suggest we do about that?

Mr Martin: The irony of this whole situation is that if Ontario Hydro had made a decision not to restart Pickering A and Bruce A it wouldn't be running those coal stations. It would have invested in much cleaner, more efficient and cheaper gas-fired cogeneration facilities in all likelihood. In terms of the immediate crisis, it's obvious we don't need the power. The lights aren't going out. There are no blackouts. There are no brownouts. We don't need those 5,000 megawatts today.

The questions I guess you're really asking are, what would replace it, and would there be a potentially adverse environmental impact? I would suggest to you that there are large and significant net environmental benefits from that shutdown, as we would see a shift into cleaner and greener electricity production to fill that gap, because running those coal stations in the long run isn't an option.

Ms Churley: Would you say that opening them up again might have the opposite effect and prevent some of these new energy-efficient and renewable projects coming on board?

Mr Martin: Absolutely. This is 5,000 megawatts which is going to prevent entry into the marketplace of cleaner, greener options. I might add that it ties us into the vicious circle that we've been in with nuclear power since its inception in this province whereby coal stations are used to do two things: to meet the peaks that nuclear power doesn't meet because it's run as baseload capacity, and to meet the gaps when the nuclear power stations break down, as they have with alarming and increasing frequency.

1650

Mr Conway: I apologize, David, for having to run out for a part of your presentation.

I want to follow up on the point that Ms Churley was just making. One of the difficulties I see as we move into the new market is that there are going to be some transitional issues. In fact, Mr Dorey earlier today talked about some of the problems. He had a very nice phrase for some of those transitional issues. Ms Churley makes the point that if we were to pull out or not bring back X hundreds or thousands of megawatts of installed capacity, some of which is very close to a very large demand centre —

Mr Martin: Are you thinking of Pickering? You can't be thinking of Bruce.

Mr Conway: Yes, I am thinking about Pickering — because there are locational power issues here that are starting to rear their heads. My question is, if you're running the system, how do you do that in the short term, in the next two to three years?

Mr Martin: The entire trend in the new electricity market is to have generating plants located closer to the areas of consumption. That's what it's all about. In large part, cogen facilities need to be close to population centres for those heat loads to be used, so I would suggest to you that it isn't an issue, that the alternative that will be put in place will be better than what we've got. Let's face it, Bruce A is certainly not close to demand centres. Yes, Pickering is, but let me tell you I live next door to Pickering, and that in itself is a problem, given the accident risk and the pollution from that plant.

Mr Conway: What is your latest information? What are you hearing through your sources about the current state of NAOP? Today one of Toronto's national newspapers reported that the utility was somewhat behind the targets. You have always been well informed, well connected on these matters. What is your scoop on that?

Mr Martin: I mentioned — you might have been out of the room — Jim Rusk's article, "Ontario Hydro's Nuclear-Recovery Plans Lagging." Ontario Hydro, surprisingly, didn't mention this in their presentation this morning, but they are suggesting that they are at least six months behind where they should be in terms of their recovery plan — "But don't worry, we'll catch up. Just because we're behind now doesn't mean that we'll be behind later." If you have followed the nuclear division in Ontario Hydro as I have for close to 20 years, this is the story you always hear. The story is, "You know, we're having a problem now, but believe me, we can fix it and we're going to turn it around." It has gone from bad to worse and I would argue that in the future it will continue to go from bad to worse, so we're throwing good money after bad with the \$22-billion investment in the nuclear asset optimization plan.

The Chair: I'd like to thank you, on behalf of all the members of the committee, for bearing with us today and for coming before us this afternoon with your advice on this bill.

Mr Martin: My pleasure.

BOARD OF TRADE OF METROPOLITAN TORONTO

The Chair: I'm now calling the Toronto board of trade, please. Good afternoon. Welcome. Please make yourselves comfortable. If you would introduce yourselves first for the Hansard record, you have 30 minutes of presentation time.

Ms Elyse Allan: Good afternoon. Thank you for having us. My name is Elyse Allan. I am president and CEO of the Toronto board of trade. With me this afternoon is Doug Cranston, who is a volunteer member of our electricity task force, and John Bech-Hansen, who is the board's staff economist. My comments today reflect the work of our electricity task force, which has been focused on the electricity system restructuring since 1996.

The board first of all wants to congratulate the government on the introduction of legislation to bring competition and customer choice to Ontario's electricity

system. Ontario's electricity consumers, the provincial economy and the competitiveness of Ontario businesses will all benefit from the competitive electricity prices the bill is intended to introduce. Competitive power costs are an important component of competitive advantage to GTA businesses in the traded goods industries, upon which the health of the provincial economy largely depends.

We support the key components of the legislation, which separate Ontario Hydro's operations into three distinct entities: the Ontario Electricity Generation Corp, or Genco; the Ontario Electric Services Corp; and the Independent Market Operator. We also support the bill's provisions to encourage the rationalization and incorporation of municipal electric utilities and to empower the Ontario Energy Board to protect consumers and ensure a smooth transition to competition.

The board of trade nonetheless has a few concerns with the proposed legislation. These relate mostly to the market power issue, and I should emphasize that we don't see these as deal breakers. We simply think they will provide greater assurance of a truly competitive marketplace in electricity.

First, the board of trade is concerned that the legislation provides for only a single Genco. We believe that Ontario's electricity generation facilities should be sufficiently separated to prevent any one company, or narrow group of companies acting together, from being able to exercise undue market power. A single Genco will dominate and will be well placed to engage in anti-competitive behaviour. It could hold prices above competitive levels or below them, as the case may be, to deter potential competitors from entering the market.

We believe that a minimum of three generating companies should be established. Each of these should contain a balanced, representative and competitive mix of generating technologies. This is the most viable approach to reform and the one best suited to competing in the new North American electricity system. We believe that the legislation should be amended so as to require this to occur.

Second, we believe that the government should seriously consider the introduction of private equity in the ownership of the proposed new Genco. Without the discipline, accountability and true market responsiveness instilled by private ownership, the benefits of competition could be unnecessarily limited and delayed. We note that the Market Design Committee has found that most jurisdictions which moved from a public monopoly ownership model to competition have done so by both dividing and divesting the generating sector before opening the market to competition.

As committee members know, however, the Market Design Committee has been compelled to develop alternatives to splitting and/or divesting Hydro's generating assets. While it has succeeded in doing so, the options it lays out seem very complex. For example, it recommends the adoption of vesting contracts on most of Genco's baseload generating capacity, as well as auctioned bidding rights, capacity limitations, demand-side responses and

bidding, bilateral contracts, price and bid caps etc. While these might work, it strikes us that achieving the desired outcomes of the bill could be achieved in a much more straightforward fashion through an orderly process of division and divestiture.

Third, we have always been concerned with any proposed restructuring which would see the government of Ontario established as the sole shareholder in the successor companies. Under the new structure, Genco will be given a clear business mandate and made to pay dividends in line with public sector norms. With the province as sole shareholder, our concern is that the government may be presented with an incentive to maintain Genco's commanding market share to maximize its revenues, in conflict with the stated objective of achieving lower electricity prices.

We believe the separation of the generation side into at least three competing units would reduce this moral hazard if introducing private equity is not an acceptable proposition.

Fourth, the transmission system must be expanded and upgraded to provide access to potential new suppliers in particular by building new interconnections to jurisdictions with competitive power prices.

Ontario is virtually an island in terms of the extent of its transmission inter-ties. This has had the effect of reinforcing Hydro's historic near monopoly on power supply in the province. If the physical constraints imposed by today's insular transmission system are dealt with, the competition potential of the market will be maximized. This will be particularly important if Hydro's generation is not separated into the smaller competing units we're recommending. We believe a balanced system of connections to adjacent jurisdictions is also essential to giving Ontario a more flexible and reliable supply of electricity.

Fifth and finally, Bill 35 provides no assurances that the new payments which will be made by the successor companies to the province in lieu of corporate income, capital and property taxes will be reduced when Hydro's stranded debt is extinguished. Failure to do so could create a windfall for the provincial treasury. To ensure a level playing field between public and private competitors, we believe the government should commit to reducing both provincial business income tax rates and payments sufficient to offset this windfall. If it does not, the provincial government should at least commit to earmarking these windfall revenues for improvements in the province's energy infrastructure.

1700

These concerns notwithstanding, the board of trade supports the objective of Bill 35 and believes they can be resolved prior to passage of the legislation. We emphasize again that our concerns should not be viewed as deal breakers. Even as it stands the bill will bring vastly more competition and choice into the provincial electricity system than has ever existed before. We simply think it could go a step further by making changes that will provide greater certainty of the desired outcomes.

Thank you, and we're pleased to answer any questions.

The Chair: Thank you very much. To the Liberal caucus

Mr Conway: I want to thank Ms Allan and her colleague. This is a very clear and helpful brief and I thank you for it. I find myself quite attracted to a couple of its specific recommendations.

Mrs Johns: Just don't go any further.

Mr Conway: I don't want to beat a — no, listen, because I think there is broad support for the principles here. There is your wonderfully felicitous phrase "the moral hazard." You deal with a point I don't think anyone else has dealt with in quite that way, that for reasons that I understand about the level playing field — Mr Dorey was here today; I think I understand what he's trying to say about levelling the playing field — you have to do certain things with the tax regime.

There is one incidental but highly beneficial consequence to Her Majesty's exchequer. The Minister of Finance, whoever he or she is, is situated under the provisions of this bill as a very important umpire and, after a certain point in time, someone who is going to receive a lot of money. That's the moral hazard that you speak to and it is a real issue. I don't mean it as a partisan criticism of the current government. I think you do have to level the playing field but I think objective people would say after this residual stranded debt is paid there is a tax windfall. The way this act is written now that is clearly the case, and I appreciate the point that you've made there.

A second and I guess final observation is market power. I think we have a problem. Macdonald could not have been clearer. Despite Mr Probyn — he was very good. The trouble I had with Mr Probyn's testimony is his report, what the report says. The report says: "Regrettably, we were not allowed to look at divestiture. That was not on the table." And the report, to use a phrase of earlier today, reeks with a concern of what the loss of that option is going to mean in terms of the second-best option.

Again, I appreciate what you said about the disaggregation issue and I'm hopeful that the committee is going to be able to in some way address the problem that the Market Design Committee has identified in that connection as well.

Mr Lessard: I'm waiting for Mr Conway's suggestions in that regard as well to come later on.

One of the things you suggested is splitting generation into competing units, and that isn't something that we've heard, at least so explicitly, in the presentations that have been made today. You're suggesting three generating companies and that they should be "a balanced, representative and competition-capable mix." I was wondering whether that is a suggestion that's just coming from the Toronto board of trade or whether this is an initiative that's coming from somewhere else. If that is a suggestion, how do you suggest that these three generating companies be established? Would it be based on geography, the means of supply, such as nuclear, hydroelectric, coal-fired; or would it be based on the cost to produce electricity at each of these units; or would it be the value

of the assets, considering where they are and, if they were nuclear, the decommissioning costs? Maybe you could elaborate on that.

Mr John Bech-Hansen: I think you're going to hear a lot more, if you go ahead, about the potential of splitting the generating companies. If we're the first, I'm kind of surprised because I think that's a consensus from a lot of —

Mr Lessard: It was suggested by the MEA, but they didn't mention number three; they weren't specific at all. There's just been concern expressed that perhaps the generating companies shouldn't all remain intact. That's as far as it's gone so far.

Mr Bech-Hansen: We've only suggested three as a minimum simply in view of the perception that the experience in the United Kingdom with only two was that that was insufficient to eliminate problems associated with excessive market power. It's really just a general observation, looking at the UK experience, that you would have to have at least three, preferably more than that. As I said, you will hear more about this from other organizations such as the Stakeholders' Alliance, of which we are a founding member. We have many points of view in common.

In terms of the distribution of the different types of plants and technologies, the discussion that we had at our task forces on several occasions was that because different power generating technologies have different scale economies, different capacities to adjust to prevailing levels of demand, ideally you would have a representative mix of existing technologies in each of the companies. We hadn't considered any division based on geography or value of the assets.

You've raised a very important question about the nuclear assets and we have certainly decided — and I have said so in the letter to the minister — that despite what we say about having a representative mix in each of the separated generating companies, our position is that we don't have a position on whether Hydro's nuclear assets should be kept together or divided up among the separated companies. There may be reasonable cause to keep the nuclear assets in a single company, publicly owned.

Mr Lessard: What would that be?

Mr Bech-Hansen: What would it be? How do you mean?

Mr Lessard: The reasons to keep them publicly owned.

Mr Bech-Hansen: I would surmise mostly political at this point. There's just more public concern on the nuclear side than there is about the other generating assets.

Mr Lessard: I'm more inclined to keep these assets publicly owned than to see them be privatized, which is part of the direction that your suggestion is going towards. We heard from Mr Osborne earlier today who was suggesting to us the need to have large utilities to compete with those in the United States and in fact to enable them to move into the United States to compete in that country. One of the things that might be interesting to consider in

your suggestion is if it were broken up into three entities but they were all publicly owned and were competing with each other and see how that might work.

Mr Doug Cranston: Yes, they would be competing with each other; however, we still get back to the same issue of one owner of three separate operating units.

Ms Allan: — represents what we would call a — similar and public ownership.

Mr Baird: Thank you very much for your presentation. We certainly appreciate the time that you took, not just with your group, but to come here today and present to us.

I just want to touch base on the issue of elimination of the stranded debt charges and what that would do with the commensurate tax revenue. Obviously we all can see that to have true competition we need to have a competitive tax regime. I was thinking this morning how Bell Canada could operate if they didn't have to pay any taxes and what effect this would have on AT&T Canada and Sprint, the monumental reductions we've seen in long-distance telephone charges. Mr Osborne mentioned this afternoon that it was almost \$1 a minute and now it's 10 cents a minute or all you can eat for \$20.

There hasn't yet been a decision with respect to how long it would take to pay off the stranded debt. One of the representatives of my public utility suggested 25 years would be good. I know some of the stakeholders suggest 15; others have suggested five or 10. I guess until the market representatives look at the financial calculations they'll have to undertake for a debt equity swap with both Genco and Servco to identify exactly what the stranded debt is, we won't get a sense of how long it's going to be until this is paid off. Essentially we could be seeing something in 10, 15, 20 years. I guess the one thing we know about this government, the current government, is that everything we're doing is about cutting taxes to try to create jobs. Just in the city of Toronto the government's undertaking a \$400-million tax reduction with respect to equalizing commercial and industrial taxes. There's everything else from the employer health tax to cutting small business taxes by 50%, even put in legislation by Bill 15 over the next eight years. The good news is it's not a leap of faith. If the stranded debt is paid off in 10 or 25 years, there's already legislated tax cuts going into effect over the next eight years. The legislation is passed for both the small business and the commercial-industrial equalization.

Certainly everything that this government wants to do is to see taxes go down, not up, but obviously we've got to have a competitive level playing field, otherwise we'd have only one team on the field if you just exempt the current player from taxes. You mentioned in your presentation your concern that maybe Genco still has too much power. Certainly we wouldn't disagree that exempting them from taxes would be anything but demonstrably worse than what some would argue today.

Obviously the government of the day in 10 or 20 years, depending on when that stranded debt is paid off, would want to look at something like an investment in the energy sector infrastructure, which you mentioned. A commensur-

ate tax reduction in another area would be another option. But that's a decision 10 or 20 years down the road, and the good news is that there are legislated tax cuts for the next eight years in two areas already. If you look at the last three budgets, we had 66 tax reductions. If that trend continues, it'll be obviously considerably more than has already been taxed. It's more just a comment than a question.

Mrs Johns: I have a question actually. I've been reading your presentation here and I'm interested in the section that's labelled diversement. When I was a Bay Street joint venture capitalist before my new-found moral high road here, we used to look for ways to bring private investment into public corporations. Going back to that hat I once wore, and knowing that many of the people at the board of trade wear that same hat, it surprises me that you would suggest at this particular time that we should introduce private funds in there because we would obviously all know that whoever invests at this particular point will be investing in a severely deflated company with not very much value. The potential is all in how we turn this thing around.

When I used to be in the venture capital business, that used to be something that made us a lot of money if we invested from the private sector, and usually the public sector got a little ripped off unless you looked at future values and all sorts of things, which I don't think you can do with Hydro right now. When you're suggesting that we should move into a private equity issue right now, I would hope or assume that you're talking about a small-dollar private equity investment for specific assets and that

you're not talking about us privatizing Ontario Hydro at this particular point. Is that correct?

Ms Allan: Yes, that's correct. We're trying to make some movement in that direction, seeing that as the long-term goal. John and Doug might like to comment additionally.

Mr Bech-Hansen: Just at the task force level we've had discussions about it and it always has been viewed that individual plants might be offered to the public market, that sort of thing, not a holus-bolus privatization of the entire generating side of Ontario Hydro in one go because that's really just not a viable proposition.

Mrs Johns: As the minister said today, and I actually agree with him very strongly, a fire sale of provincial assets is not in anyone's best interests from the taxpayer right through to the ratepayer, and I'm sure it's not in the interest of the board of trade also.

Mr Bech-Hansen: Yes.

Ms Allan: I think we would concur with that.

Mr Bech-Hansen: We specifically have also discussed the idea that mothballed generating plants, for example, could be offered to the market right now. I don't know to what extent they're there, but that was the one consideration.

The Chair: On that note, we thank you for coming forth this afternoon with your ideas and your views on these changes. It's much appreciated.

Colleagues, we will stand adjourned and we'll reconvene at 9 o'clock tomorrow morning. Our transportation is leaving at a quarter to 6 at the front doors tonight.

The committee adjourned at 1715.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Monte Kwinter (Wilson Heights L)

Mr Wayne Lessard (Windsor-Riverside ND)

Also taking part / Autres participants et participantes

Ms Marilyn Churley (Riverdale ND)

Mr W. Leo Jordan (Lanark-Renfrew PC)

Mr Gerry Phillips (Scarborough-Agincourt L)

Mr Les Horswill, assistant deputy minister, policy division,
Ministry of the Environment

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Ms Anne Marzalik, Mr Lewis Yeager, research officers,
Legislative Research Service

CONTENTS

Tuesday 11 August 1998

| | |
|---|------|
| Energy Competition Act, 1998, Bill 35, <i>Mr Wilson</i> / | |
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, | |
| projet de loi 35, <i>M. Wilson</i> | R-3 |
| Ministry of Finance | R-3 |
| Mr Steve Dorey, assistant deputy minister and chief economist | |
| Minister of Energy, Science and Technology | R-11 |
| Hon Jim Wilson | |
| Encore Energy Solutions | R-20 |
| Mr Martin Merritt | |
| Mr Paul McMillan | |
| City of Toronto | R-25 |
| Mr Jack Layton | |
| Ontario Hydro | R-30 |
| Mr Ron Osborne | |
| Ms Eleanor Clithero | |
| Greenpeace Canada | R-40 |
| Mr Kevin Jardine | |
| Municipal Electric Association | R-44 |
| Ms Pauline Storks | |
| Mr Bob Lake | |
| Mr Tony Jennings | |
| Probyn & Company | R-49 |
| Mr Steve Probyn | |
| Nuclear Awareness Project | R-53 |
| Mr David Martin | |
| Board of Trade of Metropolitan Toronto | R-57 |
| Ms Elyse Allan | |
| Mr John Bech-Hansen | |
| Mr Doug Cranston | |



R-3

R-3

ISSN 1180-4378

Legislative Assembly of Ontario

Second Intercession, 36th Parliament

Assemblée législative de l'Ontario

Deuxième intersession, 36^e législature

Official Report of Debates (Hansard)

Wednesday 12 August 1998

Journal des débats (Hansard)

Mercredi 12 août 1998

Standing committee on resources development

Energy Competition Act, 1998

Comité permanent du développement des ressources

Loi de 1998 sur la concurrence
dans le secteur de l'énergie



Chair: Brenda Elliott

Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 12 August 1998

Mercredi 12 août 1998

The committee met at 0907 in the Airline Hotel, Thunder Bay.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

The Chair (Mrs Brenda Elliott): Good morning, everyone. The standing committee on resources development is called to order for the purpose of hearing presentations on Bill 35.

Our first presenters this morning are scheduled to be the Coalition of Eastern Natural Gas Aggregators and Sellers. Are those people present? No.

CANENERCO

ONTARIO PETROLEUM INSTITUTE

The Chair: Next up is CanEnerco. Are they present? Would you like to come forward then and we'll await the presenters that are listed at 9 o'clock. Colleagues, we'll be moving to the organization at the 9:30 slot. I'm assuming you're Mr Walsh.

Mr Philip Walsh: I am.

The Chair: Welcome. Please make yourself comfortable.

Mr Walsh: I happen to know Alistair quite well, so I may give him a hard time about being late.

Mr Doug Galt (Northumberland): We will too.

The Chair: Please introduce yourself and your title for the Hansard record. You have 30 minutes in which to make a presentation.

Just before we start, I would just like to say on behalf of all the members of committee that we're delighted to be here in Thunder Bay this morning. It's an interesting bill and we're very lucky to have the opportunity to travel across the province and always enjoy coming to this great

city. We're delighted to be here and we're pleased to welcome you as our first presenter this morning.

Mr Walsh: Thanks very much. I was slated to go first. It was advised yesterday that the 9:30 had cancelled, so they put me back to 9:30, but I'm glad to be back to my 9 o'clock slot.

My name is Philip Walsh. I'm vice-president of gas supply, storage and marketing for CanEnerco Ltd. I'd like to begin this morning by thanking the committee for allowing me the opportunity to provide some comments regarding the proposed legislation.

I'm here to represent CanEnerco Ltd and the Ontario Petroleum Institute Inc. By way of introduction, CanEnerco is an Ontario-based oil and gas producer with its head office in London, Ontario. We've energy services and marketing subsidiaries located in Cambridge, gas supply and storage operations based in Dresden, Ontario, and a gas supply office in Calgary.

The Ontario Petroleum Institute, of which CanEnerco is a sponsoring member, is a non-profit organization representing the interests of individuals and corporations active in the oil and gas industry here in Ontario. Its members include producers, utilities, gas storage companies, services and law and accounting firms.

I recognize that the bulk of these proceedings will centre around the electricity issue, but I'm here to remind the committee that a portion of the proposed legislation deals with changes to the OEB act that governs, in part, the activities of the Ontario natural gas industry, particularly as it relates to a gas producer's ability to market and store its natural gas.

My presentation is comprised of two parts. The first part deals with the process of deregulation of the Ontario natural gas industry and our industry's general support of the proposed legislation, and the latter part focuses on what we see as deficiencies in the current draft, including the treatment of gas storage. We will be providing a written submission that expands upon my discussion this morning, and it is our hope that given the tremendous amount of input that you will receive, this committee will carefully consider some of the recommendations contained within that submission.

Now I'd like to lead into our comments regarding our support of the proposed legislation by providing excerpts from a paper that I gave at an LDC restructuring, retail access and competition conference held in Houston in late May. At this conference, the Ontario experience was

being touted as a template for the successful deregulation of the natural gas industry. The title of my paper, however, was, *Deregulation of the Natural Gas Industry in Ontario* or it took less time to put a man on the moon!

When Kennedy proclaimed that the US would have a man on the moon before the end of the decade, he and his administration laid the groundwork for the allocation of the appropriate resources and commitment. More importantly, however, they were able to achieve buy-in of that vision by all the key parties involved in the project. Before the decade was out a man had indeed walked on the surface of the moon and Kennedy's vision was attained.

As we know, gas deregulation in Canada, and Ontario in particular, has taken what appears to be a relatively long period of time. As we jokingly refer to it, in the days of the dark empire the natural gas customer was left with little choice but to rely on the local distribution company to acquire and deliver the gas to them at a cost determined by the LDC but regulated by the Ontario Energy Board.

At about the same time as Sir Adam Beck, a fellow Londoner, was setting up the provincial monopoly for electricity, the Ontario natural gas industry began with the discovery, in the early 1900s, of significant volumes of natural gas by various producers operating in a competitive marketplace. The development of a market in urban areas adjacent to this production resulted in the creation of a number of gas companies to distribute the gas. The indigenous production provided all aspects of the gas supply service, including load balancing, backstopping and distribution.

In time, these companies grew, they were merged, they were taken over until today we currently have two major gas utilities and a smattering of smaller municipal and regional distributors.

The growth in natural gas demand eventually exceeded supply from local Ontario production and a pipeline connected to the US supply in the late 1940s allowed for the delivery of additional volumes to the Ontario marketplace. Eventually, in the late 1950s, the completion of the TransCanada pipeline allowed for western Canadian gas supply to the province of Ontario.

Regulation was put in place that required continuous service to natural gas customers in the province. The LDCs were responsible for arranging for supply, transportation, load balancing, distribution etc. By 1985, more than 90% of the LDC supply was from western Canada.

Supplementing the needs of the LDC was again the local gas production, but to a minor extent, and the LDCs gas storage facilities. It's important to note that there is insufficient pipeline capacity to provide winter gas supply to this province and that is why underground gas storage is so crucial to the natural gas marketplace. Every gas storage pool in Ontario was at one time a gas-producing reservoir, and very few of these storage pools were discovered as a result of the LDCs' unilateral exploration efforts. In fact, most of these pools were discovered by Ontario producers. Until recently, the regulation of the gas industry in Ontario meant that the producer could not take

advantage of its ownership of a potential storage pool other than to sell it to one of the province's LDCs.

CanEnerco has recently completed the first non-utility storage pool in the province, which we use to maximize the value of our own gas supply. Unfortunately, we must still pay, though, to have that gas transported out of the province before we can sell that gas.

It was apparent that government policy was antiquated as it related to the needs of the customers and the industry as a whole. An example of that is the use of the Langford report, a policy paper on the natural gas industry from the 1960s which even up to today is still supported by one of the LDCs. Just to show how antiquated it is, I quote, "The consumption of gas fluctuates hourly as all the housewives of the province turn on the gas to cook meals."

So it was time for a change. What we've seen is a 13-year odyssey that has provided the following major events.

The 1985 Halloween agreement, so named because it was signed on October 31, was an agreement between the federal Canadian government and the producing provinces of western Canada. But interestingly, it did not include the major natural-gas-consuming provinces of eastern Canada. Without the buy-in of the governments of those consuming provinces, the benefits for the customer within those provinces were muted by provincial regulations limiting the access of the customer to supply within the province.

The signatories of the Halloween agreement presented their vision of a new natural gas industry which would allow customers better access to supply and, conversely, suppliers better access to the marketplace. It was determined that the customer would be ensured reasonable prices and supply through the creation of a competitive market for natural gas.

The problem with this accord was that there was not a complete buy-in of all the key parties in the process, so the ability to attain this vision was hampered from the beginning. However, the Halloween agreement became the first piece of the puzzle to be solved, and certain large customers and suppliers in Ontario began to take advantage of it.

In 1987 the Ontario Energy Board rendered a decision to allow for the creation of the direct purchase of natural gas by the Ontario customer. The ability to aggregate customers and to make arrangements with the LDC to utilize new and existing transportation services resulted in the birth of the direct-purchase industry and its members, whom we affectionately call agents, brokers and marketers, or ABMs.

The ABMs aggressively pursued the large end-use customers, obviously because it took less work and provided for greater volumes and margins, and soon there was a plethora of market players arranging for the supply of natural gas from western Canada on behalf of their customers.

In turn, the utilities, with their long-term transportation arrangements on TransCanada, allocated the capacity to the customers and their ABMs to move the gas east. All services within the province, however, remained the sole

responsibility of the LDC. Aside from the delivery function, services such as load balancing, backstopping and downstream transmission remained in the domain of the LDC.

In the mid-1990s, the local producers' supply contracts with the LDC, which were indexed to the weighted average cost of gas of the utility, expired. Although the existing regulations required that the Ontario producer move the gas outside of the province before selling it to a non-LDC, it was still financially beneficial to do so. As a result, the majority of local production is sold outside of the province at prices indexed to Nymex.

The competition among ABMs resulted in lower margins to be made among larger-volume customers and therefore we saw an expansion of marketing efforts into other rate classes such as commercial, light industrial and residential.

The success that the ABMs were achieving in converting customers to direct purchase, combined with the potential to generate revenues from other natural gas services, provided the incentive to encourage the Ontario Energy Board to further deregulate the natural gas industry in this province. Customer groups were also interested in seeing the opening of a competitive marketplace for services other than the natural gas commodity.

In 1996 the Ontario Energy Board mandated the industry to develop a report to the board. This report was to be the Ten Year Market Review that was released in 1997. The review group was comprised of ABMs, producers, LDCs and public interest groups. The purpose of the review was to make recommendations that would allow for the creation of a liquid and competitive natural gas commodity market in Ontario.

The review process took approximately 10 months and resulted in a recommendation to the board to proceed with a hearing to resolve those issues — and there were many — where consensus was unattainable. Also, recommendations concerning required legislative changes for natural gas title transfers were also made.

Unfortunately, the review was inconclusive due to a lack of attribution and specific recommendations. Many participants in the process were quite vocal about various issues. Positions on these issues were as would be expected, with distinct polarization between the LDCs and the ABMs. The public interest group positions were paradoxical, with their desire to ensure security of supply on one hand while acknowledging a desire to allow a competitive marketplace to lower natural gas supply costs.

As you are aware, the review resulted in a legislative impediment hearing which resulted in a recommendation from the board.

Some of the key recommendations that the Ontario producing community supports include the need to change the definition of a "distributor" to emphasize an obligation to deliver as opposed to supply. This allowed for the creation of the definition of a "gas supplier" with certain obligations to supply. Amendments to related acts were also recommended in order to allow for consistency, differentiating a distributor from a supplier.

CanEnerco and the Ontario Petroleum Institute believe the best recommendations were those providing the board with the authority to order either the removal from regulation, or redefinition of, current LDC gas transportation, storage and distribution functions and services, as well as the ability to supervise the structuring of utility services and rates so as to separate load balancing, backstopping and supplier-of-last-resort service requirements from a regulated gas supply option.

These are important recommendations because they allow the regulator to have the legal right to make the ultimate decisions related to the deregulation process. Essentially, it empowers the board to undertake a true leadership role. The board would also establish and enforce rules governing gas suppliers' access and interconnection to the monopoly assets and services of the LDCs that would remain regulated. The board would be able to enforce the LDC code of conduct, which includes the manner by which the LDC deals with an unregulated affiliate, and the board would be able to choose the most appropriate and cost-effective means of regulating monopoly services.

The legislation would also be amended to ensure that the board would have the authority to order the LDC to provide, or cease to provide, a service so as to enable a regulated service to be maintained by the LDC until a competitive gas market has grown to the point that the regulated service option is no longer in the public interest.

0920

Other changes recommended and supported by our industry included providing for the board's authority to forbear, to implement performance-based regulation and to exercise rule-making and the authority to inquire into and advise the government on matters related to the governance of the natural gas delivery system and market. These powers and responsibilities would also be related to natural gas storage operations in the province.

Our industry would like to summarize how we think storage should be treated. This pertains back to some of the concerns we have regarding the lack of legislation empowering the board to deal with the storage issue.

As you are aware, storage involves the use of the physical storage of natural gas as it pertains to providing total natural gas supply service in the future. If we are to allow customers the choice in determining who supplies them with their natural gas needs, and storage provides the supplier of choice with a more cost-competitive product, then the opportunity to lease or develop storage to help meet those needs must be available.

Where are we? Storage in Ontario has, up until now, been the exclusive domain of the utilities due in part to a combination of historical development and regulatory limitations. Presently there are 22 active storage pools in the province with approximately 210 billion cubic feet of maximum working capacity. When you look at the Ontario natural gas production to date, we've produced in excess of 1.1 trillion cubic feet, which represents approximately five times the reservoir capacity of existing storage operations in the province. The Ontario producers

are confident that other storage reservoirs can be developed.

Currently this storage is under a combination of long- and short-term contracts. The Ontario Energy Board regulates rates for storage. The short-term contracts, which are less than a year, are typically bid when a utility posts availability. The bidders are ranked in preference by customer classification. In essence, the in-franchise customer has first right, followed by an ex-franchise Ontario customer, then it's ex-franchise Canada and finally, if one were to exist, ex-franchise United States.

Longer-term customers are presently in a queuing process, although that queuing process has most recently been set down by the Ontario Energy Board. Rates for new storage are on a rolled-in basis to the utilities' existing system, thus allowing for lower rates resulting from the historical rolled-in rate method.

As a result of deregulation, however, in other jurisdictions in North America, the open-season mechanism has been created to dictate rates for new storage services, thus providing a free market to determine the value of those services in those particular areas of the continental natural gas market.

The existing Ontario Energy Board Act contains sections that are outdated in regard to the treatment of storage and rates. It is not that the act does not deal with the issue, it is the lack of specifics and the problems associated with interpretation that limit the ability to use the act in reference to the use of storage as it relates to the unbundling of services.

When the onus was on the utilities for security of supply, it was imperative that they develop an integrated natural gas delivery system involving their own facilities and/or long-term arrangements with third parties, for example, TransCanada PipeLines. Storage provided the utilities with the ability to level the summer supply with the winter demand, allowing for a combination of savings from improved transmission load factors, insurance to supply during interruptions, and peak day supply demands. Their cost allocation process was developed as a result to allocate the cost of all services: purchase and production of natural gas, and storage, transmission and distribution to the appropriate customer class. These rates were subject to the approval of the Ontario Energy Board.

With the advent of deregulation in North America, where do we want to go with storage? The unbundling of services as a result of deregulation across North America puts competitive pressures on the market, allowing customers cost-effective options for their natural gas supply needs. As a result, the creation of market centres or hubs has evolved in order to better establish physical and economical matching of buyers and sellers of natural gas. These hubs, usually an area of numerous supply sources or market users, enhance efficiencies and lower costs. Those jurisdictions where market centres can develop require unbundled rates that allow for such things as flexible receipt and delivery points, rate zones defined by the market centre and mileage-based rates within a market centre itself.

If Ontario customers are to receive the ability to benefit from the same types of arrangements, then Ontario must become a market centre, taking advantage of growing pipeline options and enhanced by increased storage capability. This would allow for the increased flexibility on behalf of the customer and the ideal services they may require to lower their cost of natural gas.

How do we get there? When the Federal Energy Regulatory Commission in the United States, which is known as FERC, instituted their order 636 it included language "for the encouragement of the development of market centres or hubs." FERC felt that to encourage market centre development, the prohibition of rate designs and tariffs was required. Since storage is a key aspect of market centre development, then this statement applies to the use of storage in a natural gas supply strategy.

If unbundled services such as storage are to be accessible by the Ontario natural gas customer, then the act must be unbundled by the OEB. The act must provide clear language that allows for development of storage outside of a rate base when it is being developed in the context of a market centre or hub.

The existing definition of a "storage company" must exclude those companies owning and operating storage for their own account. Storage can be used by a company for its own natural gas supply strategy, as is the case with CanEnerco, without the need for establishing recovery of costs from a captive customer base. If the customer is allowed the ability to choose its supply options, then the supplier of choice must absorb completely the risks associated with the development of storage if it plays a role in their natural gas supply service.

That said, I'd like to touch on some of the deficiencies, as we see it, with the current draft of the legislation. First, the proposed changes to the Ontario Energy Board Act do not sufficiently allow for the creation of a competitive market for storage and load-balancing services. I refer in particular to the proposed sections 35 and 41 of the revised Ontario Energy Board Act. As I mentioned earlier, we will provide specific change recommendations and reasons in our written submission, which I believe is due August 20.

Although some sections, such as the proposed section 28, point towards empowerment of the board to determine if a competitive marketplace allows for refraining from certain sections of the act, those previously mentioned sections, 35 and 41, may continue to tie the hands of the OEB as they're currently written.

Our industry sees the deregulated energy marketplace no differently than a football game. The consumers of Ontario are the fans. The market participants are the players. The rules of the game are the regulations. As long as all the players know the rules, the game will remain competitive and will benefit the fans. However, as in the game of football, the referee — in our case the Ontario Energy Board — must be given the total authority to ensure that the game remains competitive.

Ontario gas producers can, as their predecessors did back in the early days of the natural gas industry, provide

competitive gas supply, load-balancing, backstopping and, potentially, distribution services. Unfortunately, there are currently no rules allowing us to do so within the province of Ontario. That is why we strongly support those aspects of the proposed legislation that create those rules. What we need is the appropriate referee.

As I indicated earlier, change requires true leadership. The province of Ontario must develop legislation that gives the Ontario Energy Board the opportunity to provide that leadership. This is not re-regulation, as some parties are emphasizing, but rather an empowering of the Ontario Energy Board that our industry believes will show, as Kennedy did with the space program, the leadership required to see the creation of a truly competitive energy industry in Ontario, and in doing so, present a working model for other jurisdictions in North America and elsewhere. Thank you very much.

0930

The Chair: Thank you. We have time essentially for one question and one answer from each caucus. We'll begin with the NDP caucus.

Mr Wayne Lessard (Windsor-Riverside): Thank you very much for your historical perspective on the development of the natural gas marketing business. I'm from the southwestern Ontario area where Union Gas has been dominant for quite some time and I think we do have storage facilities in the Windsor area. I had no idea about the rules with respect to those storage facilities.

You're right that the focus on much of the debate in the hearings has been on the electricity marketing side. I'd like to ask you whether you have any concerns about gas and electricity marketing coming under the legislation and under the purview of the Ontario Energy Board and being included together in the bill, because there are some very inherent differences between gas and electricity, one being that you can't store electricity, but you can store gas. I just wanted to know what your views on that were.

Mr Walsh: We see convergence of both electricity and natural gas. Obviously, there's going to be some tremendous potential for the production of power by means of burning natural gas as a fuel. Therefore, if I had to comment in general, I would say that the legislation should combine both, recognizing however that there are certain operational differences, as you've just indicated, in each industry.

What's important is that we have to deal with natural gas and electricity as energy. Just as we're proposing that there are some things that need to be altered in the current draft of the legislation as it relates to the empowerment of the board, in certain sections under the act pertaining to that, it's important as well that the Ontario Energy Board also is provided the mandate to be the "referee" for the electricity industry as well.

The Chair: To the government caucus.

Mrs Helen Johns (Huron): Thank you very much for your presentation. It was very interesting. I look forward to receiving documentation from you. I would like to state just off the top that sections 36 through 40 are status quo sections taken out of the previous act. In effect, you're

asking us to change something that has been in existence for a period of time. We would like to hear from you on that. If you could give us some documentation on that to allow us to have a look at it, we would appreciate it.

Given that you're going to send me that, and these are status quo from previous times, I'd like to ask you, as a result of the deregulation in the gas, because we're looking at those, electricity and gas, kind of simultaneously here, do you see that with the changes you're asking for in the gas we'll be able to create jobs and investment in Ontario?

Mr Walsh: It's my feeling that any time you open up a business or an industry to competition, it brings new market entrants. When you have new market entrants, it means you have to create jobs in order for those companies to participate in that industry. Very simply put, I believe there will be a creation of jobs and additional investment in the province.

The Ontario natural gas production business and oil production business is not large relative to a number of other industries. As you are all aware, we don't see the same type of support either from the government as it relates to our business. But we would like to point out that we have a fundamental knowledge of the business here in Ontario, the oil and gas industry. From the natural gas perspective, we see an opportunity for that basis of knowledge to be used to expand upon the creation of cogeneration projects, additional gas storage facilities for the purposes of providing backstopping, and load-balancing services for those businesses. Again, in a nutshell, yes, I do see expansion of jobs and additional investment in the province.

The Chair: To the official opposition.

Mr Sean G. Conway (Renfrew North): Thank you very much. Following on Ms Johns's last question, thinking about consumers in this part of the province, and thinking about the answer to Ms Johns, what are the particular benefits that are going to accrue to consumers in Marathon and White River and Emo and Stratton and Red Lake and Nipigon and Thunder Bay and Fort Frances?

Mr Walsh: It's interesting because that's something that came up during the course of the 10-year market review when I was part of the upstream transportation and downstream transportation and storage component sub-committee of that 10-year market review. That was probably the single most concerning point, the fact that the existing natural gas infrastructure in northern Ontario is so limited to the extent that storage in southwestern Ontario really has no impact on the gas customer in northern Ontario.

Mr Conway: And the answer to the concern?

Mr Walsh: The answer to the concern is that, until the marketplace in northern Ontario is sufficiently large enough to warrant the investment of capital to develop facilities that might allow for load-balancing or any type of service that can lower costs, you just won't see the benefit of that to the customer in northern Ontario. It's just a matter of location. It's something, unfortunately, that we have to live with.

The Chair: On that note, on behalf of each of the members of the committee, we thank you for coming before us this morning with your presentation and your new ideas. We thank you also for being able to present a little bit early.

Mr Walsh: Thank you very much. I wish you the best of luck.

The Chair: Thanks. We look forward to your presentation in writing.

NORTHLAND POWER

The Chair: Northland Power, please come forward. While these presenters are making themselves comfortable, on behalf of the committee may I welcome one of the local members in this area, Mr Gravelle.

Mr Michael Gravelle (Port Arthur): I'd like to welcome everybody here to Thunder Bay and northwestern Ontario. It should be an interesting day. It's good to have you here.

The Chair: Our pleasure.

Mr. Conway: Madam Chair, just on a technical point: We're in a difficult situation because a lot of these presentations are just excellent and just one question after a 25-minute presentation is — I just wonder, can we ask presenters, if there is half an hour, can we split the time? It's almost an insult to the debate to get a presentation like the last one and just have to let it go — just an agreement maybe that if we've got half an hour for presentation, I don't know whether it's possible, but to say 15 or 20 minutes for the presentation and allow for some questions because it seems to me there's a lot of very good work here and I would just like to have an opportunity to hear the committee have a little bit of additional cross-examination. If it's not possible —

Mrs Johns: Can I just ask, are you suggesting that people who have their presentations prepared now would have to shorten them because —

Mr Conway: Not necessarily shorten it, but it just seems to me, for example, that the last presentation was very interesting and just to get it and then to get one quick question —

Mrs Johns: It was very interesting.

Mr John R. Baird (Nepean): Maybe the Chair could remind people at the beginning to —

The Chair: Yes, I will do that, as Chair. The last presenter was exactly in the 30-minute time period and every presenter before us does know.

Mr Conway: That's not my concern. I have no problem. If people want to come and just talk at us for 30 minutes, that's fine, but these committees generally work best when there's an ability to talk back and forth. So my preference would be if there's a 30-minute presentation, I hope we could, if possible — it may not be in some circumstances — have the presenters take maybe 50% to 60% of that block of time and leave at least 30% of the time for questions if that's possible.

The Chair: We'll try to do that.

Welcome, gentlemen. As you can see, we are concerned that we have enough time to be able to ask you questions. You have 30 minutes for your presentation time but it is at your discretion as to how you wish to use that time. Before you begin, please introduce yourselves for the Hansard record.

Mr Fred Brown: Thank you, Madam Chair. My name is Fred Brown. I'm executive vice-president and chief operating officer of Northland Power. With me is Mark Rodger, our counsel from Borden and Elliot.

Let me begin by saying we have a presentation here which we've given out hard copies of. I will attempt to allow enough time for questions at the end. So, Mark, if I run a little past the halfway point give me a nudge here and I'll speed it up.

I'd like to begin by first telling you a little bit about Northland Power and then make some general comments about the legislation. I would like to emphasize we are a strong supporter of the direction the government is proceeding in, and my comments, as they relate specifically to the legislation, are intended to be constructive and are by and large tuning or request for clarification, and in one or two cases, areas where we think something could be added to the benefit of the overall goals of investment and the creation of jobs and a vital competitive environment in the province.

Let me begin by telling you briefly who Northland Power is. We are an Ontario-based company. We began in 1987. Our roots are in cogeneration and the consulting business, but we've been exclusively focused on independent power and cogeneration since that time. We have developed from a banking perspective four projects in Ontario. We are today the largest independent power company in Ontario. We are privately owned and we have raised over \$900 million of investment in that period, invested here in the province.

We are a full complement of skills and services within this sector. We develop, we design, we construct, we finance and we operate. Our projects today are all owned by either the institutional investors or by the public and we are the managers of those projects.

0940

We have an operation in Calgary which acquires our fuel and provides services for not only our own projects but other companies as well. But we are an international player. We have a project of which we are 51% owner in Kiev, Ukraine, today, which is under repowering and redevelopment. We're expanding that project and going forward there. There are over 300,000 heat customers in there, which is equivalent to a total output of about 600 megawatts, 300 of it being power.

As I said, we are a strong supporter of the legislation as it's put forward, the goals and objectives that have been articulated, the opportunity for all customers of power in the province to have free choice. We particularly are pleased with the non-discriminatory access to the transmission facilities and the direction that the IMO is taking. We're also delighted with the timetable that's been put forward and compliment the government on the aggressive

schedule they've been pursuing and continue to pursue with a view to full competition by 2000.

There has been a dramatic change in not only our attitude and approach to the Ontario market but I think by all participants in the industry. It really has been revitalized.

I'd like to emphasize today that we are investing substantial sums of monies, in the millions of dollars, in the development of projects in the province on the anticipation that it will be an open and fair competitive marketplace.

We see our customers in this new marketplace at this point in time as being, obviously, the large industrials but also municipal utilities and the two new companies that will be formed as the restructuring unfolds. We view partnerships with Genco and the service company and the wires company, also institutional and commercial customers and agents, brokers and the marketers. At this point, we're not visualizing initially a direct involvement in the retail market.

Of the projects that we have under development in the province today — there are several — a short list that we deem as very real possibilities represents in excess of \$700 million of investment opportunity.

The key factor that I'd like to focus on as we go into this discussion is that it's not just investment but it's also the need to be able to raise the financing as part of that investment that is important, that has to be considered thoroughly in the legislation.

The requirements for that investment and the financing aspect of it: In our view, we need to be providing a real market; the Market Design Committee calls it a robust market, but fundamentally something analogous to the stock market, where there are a number of buyers and sellers and there are not just a few with the consequences that you have volatilities that are unrealistic and you can't determine what the real market prices are.

We need to have fair market rules, a level playing field and a licensing structure that is manageable. At this point in time with the legislation, it appears that Northland would be required to enter into five or more separate licences. We think there needs to be some simplification of that so that we could have one licence that would consolidate all this, simplifying the administration and the bureaucratic costs associated with that.

We are going to need a reasonable level of residual stranded debt. I know that's a very complex subject, but we have some comments on that that we'd like to make.

A very key point is that in order to raise the financing for these projects and these investments, we need a predictable competitive transition charge. We can deal with what the worst case is in financing, but if we don't know what the worst case is, we cannot raise the financing. If there's a simple, single message we'd like you to take from this discussion it would be that. It can't be open-ended, something that's variable, or we will not be able to raise the financing associated with these projects, which you understand is substantial.

Finally, we're comfortable with the objectives and goals. We need an implementation schedule leading to this

market that we can be raising money against and have confidence that it will happen.

I'd like to now move to stranded debt. On the subject of stranded debt, it's very simple. If it's too high, in our view, there will not be a competitive marketplace. Whatever the structure is, it has to be such that there are no unfair competitive advantages realized by any of the participants, and in particular Genco.

We view the legislation at the moment to be a little vague on how the Minister of Finance will make the decisions on this level. We would like clarification and in particular we'd like to ensure that it's an open and public process with stakeholder review. We would like to ensure that the capital structures and the dividends and capital payments that are made are directed to repay the residual debt first. While I believe that's the intention, it's not explicit in the proposed legislation.

Moving to the CTC, or the reasonable competitive transmission charge, we all know that's intended to pay down the residual stranded debt and again we'd like to recommend that it be explicitly stated that it's to be used only for that purpose. We believe this is intended but we'd like to have it explicitly stated that there will be no double charges on the same kilowatt. It could be interpreted that all players pay, that is, the producer and the purchaser, and the result is that there could be a double charge.

I have two additional points to make. I think the details are not included in the legislation but I think you would all acknowledge that these are appropriate. Any out-of-province generator that's competing in the market should pay this charge, whatever it is. That's not in the legislation at the moment. In addition, any Ontario-based company that is going to produce power for export, in order to be competitive in the export market, should not pay this charge on the export sales. Otherwise it would not make sense for an Ontario company to develop a project in Ontario. We have one very large project that's very close to announcement, where a large portion of the power we expect to produce on it will be for export. We would not want to be paying that charge on an export or we would be non-competitive and the project wouldn't go forward.

Finally, the point I made before: This charge needs to be predictable, such that it will not go beyond a certain level. It can certainly come down but not go beyond a defined period either. As we put forward our financing proposals to the institutions and the banks, we need to have a fence around it. Whatever that number is, we'll deal with it in the final analysis, but it can't be an open-ended number.

We'd like to make a couple of other points. Under the provisions of section 28, the default supply obligations that suggest that the MEUs will be providing power in the absence of a decision, there's a great deal of discussion, I understand, with the Market Design Committee on this point. Initially intended just to be a backstop, there are some concerns that it may in fact preclude players like ourselves from going after many customers during this period. That's not the intent of the language as it is there

now but that's a point that needs to be kept in mind so that all players can compete in this market eventually.

Finally, we would like to raise a point concerning the issue of non-utility generator contracts. Section 25 relates to supply contracts. It suggests that all contracts will be cancelled. I don't think that's intended to include the NUG contracts. We would like to have it explicitly stated that it's not intended to extend to the NUG contracts. A point I'd like to make under the market dominance of Ontario Hydro relates to these NUG contracts and I'll bring that up in a moment.

0950

The next point is the market power of the Genco organization, which will be somewhere in the order of 90% plus in the marketplace initially. It's very difficult to imagine a full competitive market under those conditions. We know and believe that this was probably the beginning and that through time this will change.

As the Market Design Committee is looking at vesting, asset swaps and licensing options, we'd like to make a point about the vesting contracts. We think you need to be cognizant of the risks in those vesting contracts. If the prices are set too low, there will be a higher residual debt and it will set an expectation in the marketplace that may be unrealistic. If the quantities are set too high, you will limit the competition. So it's a very delicate balancing act.

Another point is, as we're beginning into the competitive market, it's going to be important initially, before a full real market is established, that there be backup power provisions available. In all probability it will be Genco that will provide that backup power. We wouldn't want them with their market dominance to be able to charge unreasonable rates for that backup power, which would preclude any project going forward. It needs to be a fair and reasonable rate that's charged. Once the market matures, I think that need will go away.

To capsulize, Northland is very much interested in and heavily committed to the success of this legislation and we are today investing. We are looking at our business partners and our potential customers and trying to represent their needs that will support the investments that have to be made, most of which I've made the comment on already. They're looking for a definite timetable for implementation, the ability to contract bilateral contracts, which is now included. As I mentioned earlier, we're very positive and thankful that that's included. They're looking for competitive pricing, a minimal and predictable competition transition charge and early definition of the tariffs for distribution and transmission and the associated services, so that decisions can be made and financing proposals can be formulated.

All in all, I have to say we're enthusiastic. We're optimistic and counting and betting on the government getting it right, leading to the investment and jobs that we're all looking for. Thank you.

The Chair: Thank you very much. We have five minutes for questioning from each caucus. We'll begin with the government caucus.

Mr John Hastings (Etobicoke-Rexdale): Thank you, Mr Brown. I'd like to go right to the last page of your presentation and ask you, or perhaps your counsel, your concern over the continued tax exemption by the local utilities in terms of competition at the retail level as envisaged in the Market Design Committee report. How would you deal with that item: remove the exemption, limit to the two years or one year or create some kind of a tax treatment that would require this government to have to go to the feds, I suppose, to get changes under the Income Tax Act of Canada?

Mr Brown: I'm going to pass the question to our counsel, but before I do that, let me apologize for not raising that point in the presentation. In the interests of time we decided to submit it but not raise it. The reason we've tabled it, for the benefit of the people in the audience here, is that one of the options open to a company such as ours is to make investments in the municipal utilities. We would like to have that option open, and on the level playing field theme we just didn't want to have other sides of the restructuring having a competitive advantage of no tax provisions and us having the tax implications of it. In terms of specific solutions, I'm going to turn to our counsel to give whatever recommendations he can.

Mr Mark Rodger: I think there are two issues that you've identified which are discrete. The first is the issue you refer to on the last page of our submission, and that's section 88 of the Electricity Act. That appears to be contrary to the level playing field concept that was articulated in both the white paper and the various announcements leading up to Bill 35.

Under section 88, if a municipal electric utility transfers assets to either Genco or Servco, the act provides that that transfer will be done on a tax-free basis; but if the same MEU transferred the same property to Northland Power, the MEU would pay tax on that. That seems to be the disadvantage. There's an incentive for MEUs to transfer assets to Genco and Servco, and that raises a series of other questions. For example, in what circumstances would we want Genco to get bigger? There's already a huge market power concern. That really is the level playing field that doesn't seem to be apparent.

The second issue is around the default supply. There are really two concerns there. First, it's unclear how the concept of default supply customers is going to be defined. Who are that group of people? If it turns out that current MEU customers will automatically be transferred into this default supply category, then that's an unlevel playing field because with all the history with the MEUs it might be very difficult for Northland to try and break into that market.

Then there's the second question about what will be the price of power that that default supply customer class pays. I think our theme there is that if that's the way the legislation will be interpreted, the price should be set by market forces and not a regulated price in order for Northland Power to make a bid to supply part of that default supply load.

Mr Hastings: If you had some changes along your lines of thinking then, how would this improve the investment and jobs picture overall at the retail level?

Mr Rodger: On the first issue, if the tax advantages to Genco and Servco are eliminated, then companies like Northland will have an incentive right away to start chatting with municipal electric utilities about transfers of assets. Right now, there really isn't much of an incentive if there's a disadvantage against them. Second, with the default supply, it opens up a whole new range of discussions with municipal electric utilities about how that supply will be provided.

Mr Brown: For example, we have had discussions with one municipal utility involving what could be a very substantial investment related to a site and it would require a joint venture arrangement. The tax implications of that we haven't thought through, but we'd want to have an ability to pursue that with them.

Mr Baird: Just a brief comment on page 5 of your presentation. Your point with respect to getting the residual stranded debt right is very well taken. I know Mr Lessard mentioned this a number of times yesterday and the government has retained a number of experts in this field: Goldman Sachs, CIBC, Wood Gundy and Midland Walwyn.

I was particularly struck, though, with number 4 on this chart with respect to the provisions for Genco's and Servco's dividends. When these experts in the financing restructuring come to what they think will be some good advice with respect to how the two new companies are capitalized, there will obviously be a debt-equity swap, and I suspect strongly that the residual debt would be paid off long before any of the debt from the debt-equity swap would be paid off and that any dividends would go to the Ontario Hydro Financial Corp potentially with respect to paying off the debt in that debt-equity swap. But your points are well taken and certainly worth reflecting on.

Mr Rodger: I think the fundamental theme is that until the residual stranded debt is paid off, then all revenues that flow from Genco or Servco should be paid for that purpose and not held in a separate fund by the government.

Mr Baird: What about paying off the debt, though, from the debt-equity swap?

Mr Rodger: Until we know those valuations, you're right, there may not be a residual stranded debt. But what we're saying is that if there is, then any revenue in the act that's referred to is the dedicated revenue stream, or if it's Ministry of Finance, all those payments should be going to pay the stranded debt so it's paid off as soon as possible.

The Chair: To the official opposition.

Mr Conway: Thank you, gentlemen. A very good brief and I particularly appreciate, as Joe Clark would say, "the specificity of your concerns and remediation."

Just following up on some earlier questions, I think you're absolutely right on things like market power and the levels of residual stranded debt. My sense is that a lot of players on all sides of this, big government, big business, big law firms, big accounting firms, I suspect

that when they sit around a table, they're all going to agree that because there are no easy choices and there are some very hard choices to be made, there's going to be a real tendency to take a lot of this and to look to that broad rate base as a very dear friend in helping resolve some of these issues.

1000

With that in mind, I come back to what is my primary question. I'm an electricity consumer in the city of Thunder Bay, in the town of Fort Frances, in the village of Emo. I want you to tell me, Mr Brown, thinking about Northland Power under what I believe is in Bill 35 a good potential policy framework, how are you over the next three to five years going to deliver a real, measurable electricity benefit to me, the residential, farm or industrial consumer of electricity in northwestern Ontario?

Mr Brown: Let me respond to that question by talking about what I know. What I know is —

Mr Conway: My question is specific. I'm a consumer and I want somebody to give me a more specific idea of a measurable benefit that I'm going to receive from Northland Power or people like Northland Power over the next five years.

Mr Brown: In northwestern Ontario?

Mr Conway: In northwestern Ontario.

Mr Brown: OK. One of our strengths is that we have a proven track record in the pulp and paper industry. Northwestern Ontario has a large base of pulp and paper. One of our projects that we're looking very closely at is, we've been working with one pulp and paper company who has a major problem with his current power costs, particularly as it compares to his competition outside the province. We've looked at various scenarios where we would build a plant and sell power back to him or provide back to him or he would become an equity player in that plant. We've looked at scenarios of exporting power that —

Mr Conway: I'm a residential customer in Nipigon.

Mr Brown: You included industrials in your question.

Mr Conway: I know. I appreciate that and I think those are helpful answers. I'm a residential electricity consumer in Barwick, Stratton, Nipigon or White River.

Mr Brown: Let me just conclude on my point. The proposal that we put forward has allowed this particular pulp and paper company to conclude that he can now, by being an equity player, bring his cost of power competitive with their best plan, which is in Quebec.

Mr Conway: I appreciate that and I accept that.

Mr Brown: So the vitality of the community will be substantially —

Mr Conway: But for residential consumers?

Mr Brown: As I said at the beginning, we're not in the residential market.

Mr Rodger: But I think what can be said, if you look at other jurisdictions around the world, what residential customers do see and have seen is lower prices in other jurisdictions. They've certainly seen efficiencies of their service go through the roof and costs go down. The MEUs that serve those residential customers have a whole range

of options open to them under this act that they never had before, including privatization of those MEU facilities or leasing out those assets, and I think we have to remember that under the current regime those residential customers are saddled with \$30 billion of debt. So the track record is pretty good for the new efficiencies, technologies and opportunities for new approaches which are not available under the current regime.

Mr Conway: My final question, Mr Rodger. I appreciate what you've said. Just again with a view to a residential consumer in small-city, small-town northern Ontario — take your pick, Emo, Stratton, Red Lake — out of that general statement that you've just made, what would be the non-Ontario example, specific model that you would hold up as something that people in small-town northern Ontario would look to?

Mr Rodger: I would certainly look at the state of Victoria in Australia, which also has smaller and rural residential customers, and look at the UK experience and the impact of residential rates on various residential classes in that country.

The Chair: To the third party.

Mr Lessard: I appreciate that Northland Power isn't in the retail business of electricity sales to residential consumers, but to follow up on Mr Conway's question and your response to look to Victoria in Australia and to the UK example to illustrate the benefits that can go to residential customers, they're very different markets in my view. It's very heavily populated in the UK compared to northern Ontario.

My interest is in ensuring that consumers throughout Ontario are going to benefit from the anticipated lower rates that the Minister of Energy continues to tout as the benefits that can be derived from Bill 35. Although you're not directly involved in the retail market, it would appear to me that the only way, or one of the ways, for consumers to benefit is if you may have excess power that could be sold or you were developing the infrastructure in northern Ontario so consumers can benefit up here.

But the concern I have is that when people look at the Ontario market where consumers may benefit, they see the large southwestern Ontario area that can be serviced easily. It's close to the United States, the infrastructure is there to transfer power in there and consumers may benefit from lower prices, but how are consumers in northern Ontario going to benefit from Bill 35?

Mr Brown: Our plants are all in northeastern Ontario. We have one project today that has excess power. The current contract with Ontario Hydro prevents us from selling that excess power into the local market. We have in our brief here recommendations that would allow us to sell that power into the marketplace as opposed to through Ontario Hydro. We think that would help mitigate some of the market power Ontario Hydro has. We think that would be delivered at a lower cost today into northern Ontario than the existing structure.

We would encourage that the existing non-utility generators be able to invest in additional extensions to their plant and sell that into the marketplace as opposed to

through Ontario Hydro. We have an expansion plan that we would like to go forward in another plant that would allow that and it would be green power using wood waste as a renewable energy force and would be a local generation of power to the local market.

Mr Lessard: I wanted to talk to you as well about stranded debt. I appreciate your concerns with respect to the minister's discretion in determining stranded debt and the residual stranded debt as well. There are a number of unanswered questions in Bill 35 that cause me concern. I think there are just too many unanswered questions, and what the amount of the stranded debt is is the major one. You have identified that if the stranded debt is estimated to be too low, there won't be competition —

Mr Brown: It's too high.

Mr Lessard: Too high. Right, too high.

Mr Brown: The result gives Genco an unfair competitive advantage. It's been written and published that one cent of price on a kilowatt would translate into a swing up or down of \$10 billion on the debt. So people can mis-estimate what the market prices are likely to be and result in huge swings in that stranded debt —

Mr Lessard: My question is, what happens if —

The Chair: I'm going to have to interject. I apologize. That's our time. If we get behind, it plays havoc with the rest of our day.

Gentlemen, on behalf of the members of the committee I thank you for coming before us this morning, for bringing your ideas and for making this presentation to us about the bill. Your advice is appreciated.

Mr Brown: Thank you. We're going to listen to the various participants in the hearings and we may well be submitting a written submission at the end, by August 20. Thank you.

The Chair: I'm now calling upon representatives of the Thunder Bay Chamber of Commerce, please.

Mrs Johns: Madam Chair, while they're coming up, can I just put a point of clarification on the record. They asked about avoiding double charges and clause 80(1)(k) will eliminate the ability for us to do double charging. Just so you have that, 80(1)(k).

The Chair: All right. We don't have representatives from the Thunder Bay Chamber of Commerce. Is there anyone here from the 11 o'clock slot, Valerie Falls Power, or anyone else presenting? We are in a break position then, so we'll take a short recess and we'll return at 10:30.

The committee recessed from 1011 to 1033.

THUNDER BAY CHAMBER OF COMMERCE

The Chair: We'll return to order for the presenters for the remainder of the morning. We'll begin with Thunder Bay Chamber of Commerce. Welcome. Please make yourselves comfortable and when you begin, please introduce yourselves for the Hansard record.

Mr Harold Wilson: Good morning. Ladies and gentlemen, my name is Harold Wilson, chair of the board of the Thunder Bay Chamber of Commerce. With me to make

this presentation to the legislative standing committee is the chamber president and CAO, Rebecca Johnson.

Thank you for providing the Thunder Bay Chamber of Commerce the opportunity to address you today on the Energy Competition Act and how it will impact businesses in northwestern Ontario and, in particular, Thunder Bay.

The Thunder Bay Chamber of Commerce has a membership of 975 member firms and over 1,300 voting representatives. Our membership is mainly comprised of small businesses, 76% of 15 or fewer employees. The total membership is representative of all business sectors in Thunder Bay and northwestern Ontario.

Our board of directors and our economic action committee solicited input from a variety of members to incorporate into our presentation to you this morning. Following our presentation, both Rebecca and I will answer questions, but we are not prepared to address specific technical questions.

The Ontario government has taken a very important step in the deregulation of the electricity market in Ontario. The Thunder Bay business community welcomes the changes and looks forward to having more purchase alternatives available that would help to make Ontario business strong and competitive. Businesses in Thunder Bay also look forward to the many opportunities that will become available to develop new products and services in the deregulated marketplace.

Bill 35, the Energy Competition Act, may be the single most important piece of legislation in support of job creation and investment produced in the provincial House in the last decade. The following are some specific comments with respect to Bill 35.

The Thunder Bay Chamber of Commerce endorses the Ontario Chamber of Commerce white paper: Direction for Change: Charting a Course for Competitive Electricity and Jobs in Ontario. We are aware that the OCC will be making a presentation to the standing committee and thus will not repeat the recommendations contained in the white paper.

Subsections 79(4) and 79(5) of the Electricity Act, 1998, make provision that every generator and consumer respectively pay a competition transition charge. At present the amount of this charge and its duration are not specified. The business community would like to see a ceiling, or maximum rate, applied to this possible charge in order to limit the price risk that could otherwise result. Placing a ceiling on this cost item would reduce investment uncertainty on the part of generators as well as consumers and help to assure employment growth in the province.

Subsection 108(1) of the Electricity Act, 1998, makes provision for the transfer of assets, liabilities, rights, obligations and so forth of the present Ontario Hydro to the Generation Corp, Services Corp or various other parties. The business community urges the full disclosure of the valuation methods used during these transfers to guard against the possibility of an unfair market advantage accruing to the Ontario Hydro successor companies that

could interfere with the growth of a competitive market in generation.

In the absence of immediate divestiture of Ontario Hydro's generation assets, the issue of market power becomes a concern. It is difficult to envision a truly competitive market with one large incumbent controlling the bulk of market supply. Hence the business community would urge the government to work diligently towards the eventual establishment of a generation marketplace where no one entity would own or control more than 30% of the market. We believe issues of market dominance need to be addressed in the legislation, not left to the Ontario Energy Board processes. Transition mechanisms need to be established to limit returns on generating assets until such time as the market becomes demonstrably competitive.

We question who will control the new Hydro. It is important that the standing committee, when establishing their new boards within a municipality and if owned by said municipality, does not permit them to establish rates that could be higher than necessary. The excessive profits generated would then in turn be used as a revenue source for the municipality. In Thunder Bay at present, the telephone department, municipally owned, provides revenue to the municipality that is used to subsidize other programs, such as social programs etc. As a result, business in Thunder Bay may be paying higher than necessary rates for telephone and yellow page advertising.

Currently, under the Power Corporation Act, Thunder Bay Hydro cannot provide revenue to the city and thus they keep their rates under control to cover actual operating and capital costs. In fact, Thunder Bay Hydro has worked extremely hard to reduce the hydro rates, which business acknowledges and appreciates.

Profits realized by the Hydro board need to be, and should be, used to support hydro initiatives that will reduce hydro rates.

The Thunder Bay Chamber of Commerce often serves as a better business bureau, responding to questions asked by the general public on any and all issues. We have been receiving several calls related to gas brokers. The questions arise around contracts to obtain lower rates.

Bill 35 has not been passed. This leaves those businesses that are calling themselves gas brokers in a position of actually breaking the law. Many businesses, particularly small businesses, do not have the knowledge of what is happening in the marketplace and, on occasion, are signing contracts. This vulnerability leaves businesses in a position where they have signed on with someone who may not get a licence when they are issued. The government should either ask brokers to stop or do some type of public campaign to advise businesses and others of this situation.

Another area that business has a concern about is the possibility of skyrocketing electricity bills with this deregulation. The chamber is aware that Ontario is one of the highest-cost jurisdictions in North America for power. The legislation, at a minimum, must ensure that rates do not increase and, in turn, provide lower and fairer rates for power.

In conclusion, we provide you with the former statements and recommendations that we ask you to carefully examine as you conclude your hearings across the province.

Once again we thank you for providing the time on your agenda to address the hearings and to bring you these comments from the business community in Thunder Bay and northwestern Ontario.

The Chair: Thank you. We have about six minutes for each caucus and we'll begin with the Liberal caucus.

1040

Mr Conway: Thank you, Mr Wilson and Ms Johnson, for a very helpful brief. A couple of questions, starting towards the end: You make a very good point that I think all of the committee would agree with, about the confusion around various marketing tactics that are being employed before this bill becomes law. I live in the Ottawa area. I didn't bring it with me, but there was quite a prominent article in one of our national capital dailies the other day about a similar kind of difficulty and the consumer confusion that's been created thereby.

Just speaking for your members, what do you think the energy board, the energy department or the government needs to do to strike the proper balance between on the one hand allowing those people to do their business, but on the other hand not taking undue advantage of consumers, both small business and residential? What would work on the ground to deal with the problem?

Mr Wilson: On area, first of all, until the legislation passes, there isn't that support there in the first place. That's what has to take place.

The other one, and it keeps coming back down to it and you've mentioned it, is the newspaper article. We had one prominently in our newspaper as well. It's just to try to get the public aware of this, to do some education of businesses. We can do that through the chamber, but not all businesses are chamber members, the general public who can be preyed upon by people who are just trying to offer something that they cannot deliver on.

As far as the balance goes, once the legislation is in place and there are proper licences for them, I think that will solve part of it, but again there's the diligence that you have to do. There are a number of companies offering telephone rates, gas rates, the types of things that they expect can kind of lure people into some false ideas about what kind of rates they can achieve, what kind of savings. I think it's important that until that takes place, we just make sure that if they're not licensed, stop them.

Mr Conway: A second question then or general question. I would argue that Adam Beck was probably the most powerful, the most successful and I want to say the most — well, he certainly was the most powerful and most successful business lobbyist in the history of 20th century Ontario. Beck's concern as a small business person at the turn of the century was that in an unregulated market, and particularly with what he saw happening in places like Toronto where some not very savoury capitalists had got their hands on this thing called electricity, small business in the hinterland — cigar box makers in London, harness

shop operators in Preston — would just get screwed. Pardon the language. Beck began a great campaign to try to put some fairness into the marketplace. His great campaign began and succeeded beyond probably his wildest imagining. That's history.

We're going into a new world now. When I look at the map of Ontario and I look at the metropolitan community that is Thunder Bay, I see a city of 125,000 serving a vast hinterland in northwestern Ontario. I say to myself, I can imagine the market working around Thunder Bay because I've got the population to support it. There are economies of scale. What I want to know is, how are we going to make this market work in the hinterland, on which you depend?

I don't want to sound like a broken record, and I support the need for change and competition and better regulation. I want to know and I want somebody to tell me, how are we going to make this market work to the advantage of small businesses and residential and farm customers in that litany of communities that I will continue to rhyme off as long as I'm here? I've been to Emo and Stratton and White River, as have a number of other people here, and I find that a lot of these people are sceptical — they've heard this song before — and that the benefits are not going to be evenly distributed. They probably believe that the big players are going to win, in that they will probably get quicker, lower rates, and less of the multi-billion dollar debt to pay off, and that the broad base of regular customers, and in that I'd include a lot of small business, somehow are not going to see the benefits as quickly or as materially. How do we make that market work, particularly in and for the great region of which Thunder Bay is the centre?

Mr Wilson: I think one of the things the minds that are taking a look at how this is going to work with breaking it up — you have the generation side which is one aspect of distribution. The lines are already in place, so I don't think we're talking of wholesale change when this happens. At the same time, northwestern Ontario generates an awful lot of power as well, so there might be some opportunities.

I think the regulations have to be in place to make sure that the smaller communities do not do poorly at the expense of the larger ones. I think that would be acknowledged. I would expect that's one thing the committee will be hearing, is hearing here and will hear until the end of these hearings.

Ms Rebecca Johnson: I would just like to add one thing, if you don't mind. The fact is that within northwestern Ontario we have some excellent networks, and I don't know that the government really uses those to the best of their advantage, whether it's the Northwestern Ontario Associated Chambers of Commerce or the northern networks. I think those organizations can provide information that goes out in a very broad-based way, to get the information out; an education process, which is your former question. Even secondly on this question is the education process.

Generally, I think that businesses know there is something happening with electricity. They don't know

specifics. They don't really care. All they want to do is have cheaper electricity. That's what it boils down to. So how do we educate them to know that?

The concern now with the gas brokers going out, we're really very concerned about that happening. As we've identified in our presentation, the calls that are coming into our office — with unlicensed people out there doing and promoting it, small businesses, unfortunately, because of the lack of education, really sign up and then they're losers in the end. We have to do something to make sure that doesn't occur.

Mr Gravelle: You made reference to the concerns about the increase in cost of electricity. You say it should, at a very minimum, make some commitment to low-cost energy. There is nothing in this legislation that makes a commitment to that. Do you feel there should be something written in this legislation that commits to low-cost energy?

Ms Johnson: Certainly that's part of our message to you this morning. We feel very strongly that we have to have it, whether it's in the legislation or whether it's in the regulations. That's what business requests.

Mr Wilson: At the very least that that be a goal or a principle that all this is leading to.

Mr Lessard: Thank you very much for your presentation. In effect, this has been a principle that has been espoused by the Minister of Energy in his introduction of this bill and the lead-up to it was the promise of lower rates for consumers. In my opinion, that has really enabled the gas brokers and the electricity brokers to go out and do the business that they have been doing up until now, because the government has been telling people that this legislation is going to lead to lower rates and there's going to be the ability for consumers to purchase and make arrangements to get the supply of their electricity and gas from whomever they may choose.

My concern and the concern of my NDP caucus members is that in this great new reality in the electricity market, small residential consumers are really not going to be in a very equal bargaining position with people who are going to be selling electricity and gas to them. That is a major concern that we have. They really are not going to be on an equal footing.

What we've been saying, and we've been trying to raise public awareness on this issue right now, is that if there are electricity brokers who come to your house and promise lower rates or promise to supply electricity at some point in the future, you don't sign anything right now. We've been trying to get that message out.

One of the provisions that we'll be asking to be put in this legislation as well is that any contracts that are signed between now and the time that there is competition in the electricity market are voidable, so that people can get out of those contracts.

You raised the concern about skyrocketing hydro bills. We share that concern, and also the interest that Bill 35 results in lower and fairer rates for all consumers, especially small residential consumers. I wonder what causes

your concern about the possibility of skyrocketing hydro rates. Where does that concern originate?

Mr Wilson: I can maybe answer the last one first. We always have a concern with things skyrocketing. That's the bottom line. When everything changes, one of the concerns is, what will be the effect on business, from the taxation point of view, from different things, hydro rates, water rates? It's something that we're just diligent about and with any change we want to make sure that that is going to be met, at the same time as, provincially, we have an organization, the Ontario Chamber of Commerce, that we know will be working dutifully after this as well to ensure that business is recognized as having some concerns while this is enacted.

You talked about residences not having an opportunity. Quite frankly, I think that they do and that's the elected members, should those rates start to go up. I think no matter what the political stripe, if hydro rates do start to go up significantly, all MPPs will be getting a lot of calls, so I think that's a check that's in there at that time.

You mentioned voidable contracts. I think we were talking about brokers who are not legitimate. They can put anything in there and since they're not legitimate, they probably don't intend to deliver or they haven't researched enough that they can deliver. No matter what's in the contracts, we're just saying people should wait until the regulations are in place to regulate the brokers before going ahead, not just the fine-tuning of a contract.

Mr Lessard: There will be a time, after the legislation has passed and licences are issued, before there is open competition, that there will be legitimate licensees out there selling as well, so the voidable contracts suggestion comes into that area as well.

You mentioned as well that there should be a limitation of 30% of market suppliers for any one particular supplier. Where is it that you come up with that number? Is your reason for suggesting that in the interests of hydro consumers, and how will they benefit?

Mr Wilson: Where that figure came from, we talked about the small businesses that we serve. Some 56% of our members are small businesses. At the same time, we also serve the large business community and a lot of our larger companies have stated that one of their concerns is there's a lack of real competition. It did not serve anyone. It's a number that they said should be worked towards. Again, there's nothing really magical about that, but it just ensures that there is that competition available.

One other tie-in that has come up is that I don't want to lose sight on the generation side. We have a lot of small communities working with larger companies in their own communities that can do something in terms of generating hydro. That's where we can see some real benefits to our smaller communities, to communities in northern Ontario. There might be jobs, employment and investment on the generation side, and that in turn can ultimately reduce the amount that they would have to go to a single monopoly. That's where there's some great potential. We talked about the amount of investment in jobs that might result from this legislation, and that's a main area.

The Chair: To the government caucus, please.

Mrs Johns: Thank you very much for your presentation. It was very interesting. I'd like to just comment on Adam Beck for a second. I think Adam Beck, in his monopoly situation in the 1900s, is far different from what we deal with today. I personally can only imagine Adam Beck rolling over in his grave if he knew that 40 cents out of every bill was going to pay off the inefficiencies of Ontario Hydro over the last 40 years. I think it's time to look at a different system and move forward, as we say. We'll come out of the 1900s and come into the 21st century.

Mr Conway: You may want to read the book, Helen.

The Chair: Order.

1050

Mrs Johns: Order. We'll start to banter back and forth and it will be an unproductive day.

With respect to the marketers, we are concerned as a government about the marketers. We of course are saying that the Ontario Energy Board will regulate this, and anyone who enters into a contract prior to the time that a marketer is licensed, the contract will be null and void. We are looking for ways to inform the public, and I have to say I've spent a great deal of time on this issue and I've thought a lot about this. We've talked to the MEUs and we've said, "Nobody reads your statement." When you get your statement in the mail, how often do you read the little blurbs that are associated with it? Some of us do; some of us don't. That's one way to get to the people. Another way is to do seminars, but of course if we do seminars, not a lot of people know they need to come to a seminar to hear about it, because they don't know what we're talking about.

So we are looking for ways to help inform, and we are very committed to doing this. From that standpoint, we are looking for input about what you could offer us and how you could help us move that agenda forward. It's a very important part of this bill, and I think all parties agree with that. I don't know if you have any suggestions about what you perceive we should do, but I take them from anybody in the crowd in writing, or from yourself today, of course.

Mr Wilson: I always have suggestions. One of the things we enjoy in Thunder Bay is some good partnerships. There are ways that our members, the chamber of commerce, can be informed about this. We also enjoy an association with labour, with the social planning council, with different organizations, with the city of Thunder Bay as well, by getting together and being able to do some kind of promotion at that time.

It's my experience, though, that you can talk about one of these things every month, you can have monthly meetings about it, monthly newsletters, but in between that, somebody is going to be called and somebody will have forgotten the information, missed it or, as I say, if something sounds just too darned good to be true, they might sign on. So the question that the contract will be made null and void by the energy board, that's fine unless somebody has already paid out some money. You can

never totally cause that not to happen, but it is incumbent while this process is taking place to know that they're out there. There are always scam artists in every way, and especially while this is going on, I think some of that extra effort should be taken until Bill 35 passes.

Mr Johnson: Could I just add to that? If government provided chambers of commerce in Ontario two or three statements — because we get calls to our office on a regular basis, and it's people who are very vulnerable, as well as businesses that are vulnerable. What occurs is that we sit down as staff to figure out how we're going to respond to these questions, because we can't in any way detract from a business being in business. But if we were able to say to our staff that the law is not in place, the bill has not been passed etc and this is what the staff should be saying, which is legal, then we can at least inform a lot of people. That happens on a regular basis.

The other thing is that if you provided for us some information, we would be most pleased to distribute that in whatever manner. That goes out to 100,000-some-odd businesses in this province.

Mr Wilson: We are also tied into the chambers of commerce throughout the northwest. As I said, there is no Better Business Bureau here, so by us being able to do that, sending it out to our other chambers, it gives them some ammunition too when they're getting calls.

Mrs Johns: In your presentation you raise the issue of excess profits by the municipal electric utilities. I know you're not reading-the-act-at-bedtime sort of people —

Mr Wilson: That's my wish.

Mrs Johns: — but under subsection 77(2) we have the ability at this point, through the Ontario Energy Board, to regulate the municipal electric utilities and their wire prices and those kinds of things. So we will be able to stop them from a gouge of the public, if they deem that's the way they want to do it. That's where we will have the control to do this, in this enabling legislation, just for your interest.

I think my colleague Mr Hastings —

Mr Wilson: He's leaving the building.

Mrs Johns: From that standpoint, I will ask my next question, which is about pricing. Do you believe that if we get efficiencies with Ontario Hydro and we move to go into a market and ask for competitive pricing with different companies like Northland, with other groups of companies, that because that's about 80% of the price of electricity, we'll be able to get a lower price and that will be passed on to the consumers?

Mr Wilson: Do we believe that will happen?

Mrs Johns: Yes.

Mr Wilson: We believe that will be the intent. We hope it's going to happen; we just suggest diligence at all times, especially when you're going out into the marketplace with that. As you have stated, though, with 40% going towards debt, that's going to be an issue. If one area is doing part of the generation, where is that going to sit? Those items have to be paid for somewhere along the line. You might be able to handle it in one area. Broadly, are you going to be able to cover those costs and

be able to do it competitively so that once the person on the street or the person with the business gets their bill, they do see that they are getting the savings?

Mrs Johns: Let me be very clear on that issue, because you've raised a very fundamental issue. The ratepayers in Ontario are paying for that debt now; they will be paying for that debt later. It's 40% of their bill right now; it will be that afterwards. There is no new debt as a result of us moving forward with this deregulation. We are not looking to add new debt to Hydro. But the province and the taxpayers have guaranteed that debt in the past and they will have to pay for that debt because they have guaranteed it. But there is no new debt that's going to come as a result of Bill 35.

Mr Wilson: One of the questions I have is, will some of that debt be retired as well? There might be a component in the billing to help retire some of that debt at the beginning. Savings might actually be realized in the longer term, as that starts to be repaid. So it would be nice if it was 40% now and you could stand here in 10 years and tell us it's 30%.

Mrs Johns: That's an excellent question and that's exactly what we're trying to do. We're trying to move that the dividends come back, and the tax payments, into the debt so that it reduces very quickly and the taxpayers and the ratepayers start to pay less and less on their bill. That too will bring savings to the ratepayer. That's another way we hope to obtain savings, by getting that debt down quickly and that 40% going back to the ratepayers of the province of Ontario. Thank you for bringing that up.

The Chair: On that note, it's my pleasure to thank you for coming. On behalf of all the committee members, we appreciate your input this morning. We'll carefully consider that as we review the bill changes.

1100

VALERIE FALLS LIMITED PARTNERSHIP

The Chair: We now call upon representatives from Valerie Falls Power. Good morning and welcome. Please make yourselves comfortable.

Mr David Boileau: Good morning, ladies and gentlemen. My name is David Boileau. I'm the president of Seine River Power Inc. My company, with 35%, and Great Lakes Power, at 65%, together own the Valerie Falls hydroelectric project. I'm actively involved in hydro industry issues and provide valuation and investment advice on existing and new hydroelectric projects in Ontario and other parts of Canada. With me today is Bud Caruthers, a vice-president of Valerie Falls.

On behalf of Valerie Falls, I would like to thank you for the opportunity to make this presentation to you today.

Valerie Falls Limited Partnership developed and operates a 10-megawatt hydroelectric generating station on the Seine River, three miles north of Atikokan in northwestern Ontario. The Seine River flows west into Rainy Lake and Lake of the Woods, forming part of the Winnipeg River drainage basin.

The Valerie Falls generating station, completed at a cost of \$23 million, started producing power in October 1994 and was officially commissioned in June 1995. The power plant, built on a man-made diversion of the Seine River, contains two five-megawatt turbine generators. All power produced by the station is contracted for sale to Ontario Hydro under a long-term sales agreement which expires in 2044. This agreement has a fixed rate schedule and term, with the only variable being an annual adjustment for inflation. There is no — and I repeat, no — provision in the contract for a flow-through to Ontario Hydro of any new government-imposed taxes.

The Valerie Falls generating station is a typical hydroelectric non-utility generator, or NUG as they are referred to in the industry. This power station was developed under special rules and incentives designed to encourage alternative energy sources. These projects promoted the goals of the Ontario energy security policy, which was introduced in the early 1980s by the provincial government. The objective of the policy was to increase the energy contribution by provincial indigenous energy resources from the 1978 level of 22% to a level of 35% by 1995. To this end, the Ministry of Energy, Ontario Hydro and the Ministry of Natural Resources worked co-operatively to release water power sites and develop power purchase policies which would encourage private investment in new energy generation. A direct consequence of this policy was the subsequent private development of approximately 150 megawatts of new hydroelectric capacity in northern Ontario, representing \$350 million in capital investment and creating an average of 500 full-time jobs per year for the past nine years.

Hydroelectric developments require a very large upfront capital investment. The construction phase is high-risk due to the vagaries of nature, such as flood and difficult civil works sites. The payback period is typically at least 20 to 25 years, and with the drought we're experiencing this year, maybe it's 30 years.

Long-term stable power sales contracts and consistent and predictable government tax policies are required to encourage experienced private investment in this industry. Therefore, it is logical that as a partner in the Valerie Falls project, my company has several serious concerns about the impact of Bill 35 on our business, particularly with respect to the imposition of competition transition charges or other stranded debt charges at the generator level. In our case, without a legislative exemption, a stranded debt charge levied at the generator level, as is currently provided in Bill 35, would have to be absorbed by Valerie Falls Limited Partnership. This would have a devastating financial impact on the project.

The situation at Valerie Falls is mirrored across the province. Virtually all NUGs which have contracts with Ontario Hydro would be financially impaired by a stranded debt charge at the generator level. I therefore urge the committee to recommend to the minister that the final legislation contain provisions to ensure that NUG investments are not devalued due to stranded debt recovery.

On a second point, I would also like to emphasize that the inequitable method of municipal assessment for hydroelectric projects very nearly caused the cancellation of the Valerie Falls project. I ask the committee to help correct this inequity by recommending to the minister that companion Assessment Act legislation be introduced at the same time as Bill 35 in order to level the playing field and tax generating facilities in a similar fashion consistent with the practice in adjoining provinces and states. Without a change in assessment policy, Ontario will lag behind in new hydro investment, and the economic and environmental benefits of this wonderful power source will be lost.

In addition to the Assessment Act, there are a number of other crown statutes and policies which affect our industry. These include various Ministry of Natural Resources and Ministry of Finance policies related to water power development and water power royalties. Some of these policies and statutes will need to be re-examined, revised and/or rescinded if the intent of Bill 35 is to provide a level playing field for various sources and types of energy.

As a private investor in the hydro industry, I welcome many of the changes proposed by Bill 35. There is a real need for changing how electricity is regulated and sold in this province. I look forward to opportunities which should attend open access. However, I strongly object to a stranded debt charge on our sales to Ontario Hydro as this would adversely affect the economic value of our operation. I also encourage the committee to examine existing statutes and regulations of the ministries of natural resources, finance, environment and municipal affairs to ensure that hydro projects operating under Bill 35 are not disadvantaged by rules not addressed directly by Bill 35.

Thank you once again for the opportunity to appear before you today. Bud and I would be pleased to respond to questions from the committee.

The Chair: Thank you very much. We have six minutes for each caucus for questions and we'll begin with the third party.

Mr Lessard: Thank you for your presentation. You've raised at least one issue that was raised earlier today which, at least on my own behalf, I wasn't familiar with until it was raised, and that is the taxation of generation facilities here in Ontario vis-à-vis generation facilities outside the province and how special charges may be applied.

This was a government that got elected promising people a 30% tax cut, and people are seeing now what the cost of that tax cut is and how it's going to be paid for. People are seeing increased user fees and special charges, and this was a government that during the campaign said that user fees are taxes. I would argue that the special charges you're talking about to cover stranded debt and residual stranded debt are taxes as well.

My question is, how many other non-utility generators are there that may be experiencing the possibility of this unfair charge?

Mr Boileau: I'll be fairly general in my response on that because I'm not sure exactly what the number is. I believe — Bud, you can correct me — there are about 2,000 megawatts of non-utility generation in the province. I would think that probably half of that is under contract directly with Ontario Hydro and would suffer a full loss of value for whatever that stranded debt charge would be, because there is no provision for passing that charge through to Ontario Hydro if it's charged at the generator level.

In addition to that — and I'm not here to defend that industry — what I would call the industrial NUGs, companies like Abitibi or Inco who produce power themselves at their own hydroelectric facilities or other generating facilities and transfer it either directly or through Ontario Hydro's lines to their operations — paper mills, mines and smelting operations — also would suffer that direct loss of whatever that stranded debt charge is.

Bud, did you have something to add to that?

Mr Bud Carruthers: The Independent Power Producers' Society of Ontario, IPPSO, will be making a presentation, I'm sure, to this committee and they could give you the exact number of independent producers.

1110

Mr Lessard: What will be the fate of non-utility generators like Valerie Falls if this change doesn't come about?

Mr Boileau: It would be very, very serious in that the average price of electricity sold by NUGs to Ontario Hydro, or the valuation, might vary between four and six cents. We're not exactly sure what the stranded debt charge would be, but if it was one cent, for instance, it would represent one fifth of the value of the project. I don't know very many projects that have those kinds of margins. Anything that's operating with a 15% margin or return is going to be in very serious difficulty, whether they are financed or whether they are purchased outright. Does that answer that question?

Mr Lessard: I'm wondering what the serious difficulty may lead to. Would it be possible that it would become bankrupt or go out of business or be insolvent?

Mr Boileau: There are two possibilities. Yes, that would be a possibility in the event that the project couldn't sustain it and make its financing requirements. The other possibility is that it basically shuts down any opportunities that are available for development in terms of charging it at that point, because it would add that much more cost to the generator.

Mr Lessard: One of the advantages being touted by the government in Bill 35 is the job creation aspects of it. From what you're saying, there is a possibility of jobs being eliminated, and in fact, if Ontario generators have to pay this special charge and American generators don't have to pay it, we have the possibility of actually having jobs created outside the country and power being transferred into Ontario, which would be a real anomaly.

Mr Boileau: Our point is that if it's charged at the generator level there is great danger of that circumstance.

Mr Lessard: The last point I want to make is with respect to your suggestion that we amend the Assessment Act. If you've been following the debates in the Legislature you know we've been through that about four times now. I don't look forward to amendments to the Assessment Act for a fifth time. However, we do take your suggestion under advisement. Thanks.

Mr Baird: Thank you very much for your presentation. We appreciate your submission and we'll certainly take the time to reflect on it. You've raised some excellent points.

I particularly am struck by the comments you made with respect to the debt and any charge to pay that off, because obviously that's something that is of concern to all of us.

When I got my Nepean Hydro bill — that's in Nepean, an Ottawa suburb — they had a little graph which explained that Nepean Hydro was only responsible for 10 cents of every dollar that I paid for my Hydro bill and that the transmission and generation were 70 cents and 20 cents, that the other 90 cents was basically going to Ontario Hydro.

The \$30-billion-plus debt has been rung up over the last 30 or 40 years by all parties while they were in government. To be candid, someone wasn't watching the store: \$30 billion in debt. Today almost 40%, 42%, 44%, when you look at principal and interest, of our dollars are going to pay for that debt. So the store wasn't being watched appropriately by all three parties, to be fair. I wasn't around during that time, but that's a real problem. Obviously we can't make that go away. That has to be dealt with.

There are a number of options, but basically the consumers are going to continue to pay because at the end of the day obviously they're the ones who pay that through the payments and other charges, who would, if necessary, continue to pay approximately 40%, 44% of their hydro dollar towards paying that debt. We can't make it go away. As shareholders in the province, each of us is responsible. As shareholders of the corporation, each of us is technically responsible, so we pay it today.

To be candid, I was very shocked to learn that it was that high. I knew Hydro had a \$30-billion debt, but I never would have equated it with upwards of 40%, 44% of the dollar. So your comments are well taken with respect to putting any sort of special charge, if it was required, on generation.

I guess when you look at a regime, at how the government deals with this large debt, you've got to look at — for example, someone could be a self-generator. Would they fall under the auspices of being a consumer? How do you ensure there are not loopholes in the legislation so that everyone takes their part of the debt that's been built up over the last 30 and 40 years?

Your comments are well taken and certainly worth reflecting on, but I can tell you that all of us are very, very sensitive. That's why it's, in my judgment, clearly not any sort of new tax because it just basically reflects the existing tax regime that we already pay for today in our

bills. It's not maybe levied out that way, but it's obviously a real concern that we begin to clean up that mess. All I could think of was, what shape the Ontario economy would be in if we didn't have that 40%, 44% debt charge on all of our bills.

I want to thank you for your presentation. It certainly merits some consideration and we'll reflect on your thoughts.

Mr Boileau: Just to clarify that point again, we recognize that there is going to be some recovery of debt. Somebody's going to pay for it. Obviously, the consumer is. Our problem is that all of the kilowatts that are sold in the province are assigned a value of a half a cent or a cent to retire the debt, or whatever the figure might be. Ontario Hydro can pass that on to the end user. We, as a generator, have no opportunity to do that, so if the tax is put on at the generation level, then we are caught and trapped in between and we would be absorbing that ourselves and we just simply couldn't afford it.

Mr Baird: I don't think there is any intention for it to be doubled, but you just want to make sure that, for example, the self-generator who might be self-generating for their own particular enterprise isn't lost.

Mr Boileau: I think there is a provision in the bill for either attaching the stranded debt charge at the end use or at the generation end. Our hope is that our point is taken that if it's applied at the generator end, then it's discriminatory and seriously devalues our investment.

Mr Baird: Obviously that's one of the things. We want to make sure we assign the appropriate debt to both Genco and Servco and then to see what the scope of any residual debt would be. To make sure, the government had a process and has brought in a number of financial advisers — Goldman Sachs, CIBC, Wood Gundy and Midland Walwyn, some experts in this field.

The concern has been raised to make sure that we get it right, because it's going to be very, very important to make sure that is right and that we take the time to get it right, to ensure that it's the appropriate valuation so that it minimizes any potential they charge, which may or may not be there.

My point that I want to leave with you is that we're already paying today as customers, although we may not recognize it, the interest and the principal on the \$30-billion-plus debt. I think many people — certainly I was surprised to learn that as a consumer, that it's just built right into our bill. So for a consumer that charge or part of their bill isn't new. It's just taking an identical form, and this would be after, with the other payments each month.

1120

Mr Galt: Thank you for your presentation. As we move to near the end of the presentation you're talking about other ministry statutes and regulations and having a concern about the environment. We had a protest yesterday out on the front lawn with Greenpeace. I think they were there to raise funds. I don't know if they're really concerned about the regulations, because everything they've mentioned we have concerns about and are empathetic to their concerns, no question.

This legislation we're proposing is enabling legislation to change regulations under the Environmental Protection Act and via that, through the OEBA, to producers of energy outside of Ontario.

I am just wondering about some of your thoughts since smog is not the problem here that it is in downtown Toronto, unless maybe of course you have a big forest fire nearby. If the regulations are the same for importers of power as they are for the producers of power here in Ontario, is that going to affect you? I am just looking for some of your feelings in connection with this enabling legislation.

Mr Boileau: I think that when I referred to other statutes and regulations I mentioned the Ministry of the Environment one because there are obviously green power issues associated with Hydro that would probably take more time than we have today to get into.

There were other ministry regulations and statutes that we were concerned about. One of them in particular might be the Public Utilities Act or the Municipal Franchises Act. We would expect that a companion bill would be passed to amend or rescind some of the aspects of those because, as a private generator, we are not allowed to construct a facility in a municipality without the approval of the council of that municipality.

We would expect that under an open-access market, all of the legislation that is on the books today would be examined to see if it truly promotes open access. If there's something in conflict with that, then it should be revisited.

With regard to the Ministry of the Environment issues, again I'm a great champion of hydroelectric power. I think it's not going to replace all of our needs. It doesn't have the capacity in Ontario. We don't have enough high waterfalls or big enough rivers to do it. But certainly there is an opportunity for another thousand megawatts at least in northwestern Ontario or northeastern Ontario. That's big investment, it's big jobs and it's something that made the north. I think we want to make sure that when we design the rules for open access we don't unnecessarily discriminate against Hydro, which has been the case in our province.

You mentioned Sir Adam Beck, Mr Conway. I'm a great admirer of him. He built the industrial strength of this province primarily on hydroelectricity. Up until the time our needs grew beyond hydroelectric, it was a very proud enterprise. We still believe today that hydroelectric projects, given an even and level playing field, can compete very successfully in Ontario and in all markets, including American and adjoining province markets. But we have to have the tools to do it. That's why we're here today, to make sure that we don't end up with a stranded debt charge at the generator level, because it will be very detrimental to hydro development, and that other aspects of legislation that currently exist are revised to reflect that view.

Mr Conway: I appreciate the presentation. Not that I want to restimulate the debate about Mr Beck, but Mr Baird made a very interesting point about the situation in which we now find ourselves. I think that as a relatively

young person he has a very valid right to make that point because there is pot of debt.

One of the problems I guess I've had with this Hydro debate — I've been around it personally for a number of years and I've made some effort to study it since the Beck era — is that if you could just get the religion out of the debate, if you could just get the theology out of the debate, because much of what's given us the big mountain of debt was never supposed to happen. I was there. I was told.

Mr Baird: The storekeeper.

Mr Conway: I just say that because now we're at another turning point. Listen, I think there is strong bipartisan support from this committee for a new direction. But I'm telling you, I am skeptical because there is such overwhelming theological belief that certain things must axiomatically happen. I sure as hell hope they do. But I was told that 30 years ago. I sat on a select committee last year on Ontario Hydro Nuclear and I wanted to have a court martial, because 30 years ago the theologians told me it couldn't happen.

One of the reasons why I'm interested in Adam Beck is, to be fair to Ontario Hydro, they ended up with a bag full of utilities they never wanted. Some of them were in northern Ontario and some of them gave us the biggest political scandals we ever had because the market behaved in a way it wasn't supposed to behave and because the commodity is electricity. Because Ontario and Canada are big and empty and cold, electricity is about the most political commodity you could imagine.

So I agree with Mr Baird. I want a new direction. I want reduction in bills and a reduction in debt burden and I want there to be joy and peace and equity in the land.

Having said that, I want to come to your brief. Let's talk about assessment. Could you just quickly and briefly explain the arcane world of property assessment as it relates to private hydroelectric power projects in this province and what we need to do to inject more fairness into the playing field?

Mr Boileau: Sean, it's an interesting point and one we raised because we feel it's very important. Just a very brief background to assessment in Ontario: There are two methods of assessment for hydroelectric projects and for other energy projects, basically. One is under the Assessment Act, which falls under the Ministry of Finance. The second method is under the Power Corporation Act, in grants in lieu of taxes, which is available for Ontario Hydro and municipal utilities.

The structure under the Power Corporation Act assigns a specific value in dollars per cubic metre for inside space of a powerhouse and that's the rate that is paid to the municipality by Ontario Hydro. Private developers are subject to assessment under the Assessment Act and the structures of the facility are assessed.

The effect of the two different assessment methods is that a typical hydroelectric project that is owned by a private company will pay 3,000% more in property taxes than the same facility would pay if owned by Ontario Hydro. In other words, if a project was a 50-megawatt project, a private company would pay 3,000% more in

taxes to the municipality than would Ontario Hydro if they owned it.

Mr Conway: Will that change under the provisions of this bill? There is a reassessment provision around hydro works.

Mr Boileau: I don't know. I haven't seen that information, so I can't answer that.

There's another problem with the whole assessment system in that kilowatts are taxed differently between hydro kilowatts and thermal kilowatts. Generally, there is about a 2,000% difference. So if you own a hydro project, you're paying 2,000% more than if you owned the same size of thermal project. By "thermal," I mean coal- or gas-fired. This is a real serious problem in terms of developing new projects because there's some discrimination in the energy.

What's happening in other jurisdictions, in states and provinces, is that they're looking at a specific rate per dollar sold of electricity, which seems to make more sense and is more rational and even levels out the playing field between different sources of electricity.

Mr Conway: Perhaps we might ask these deputants, Madam Chair, to supply some paper to the committee on some of those assessment inequities and what they have meant to people like yourselves, just so that, as we get into the later stages of this, we might turn our minds to it. Could we ask you to do that, just to maybe expand a bit on your actual experience with the previous assessment regime? This is all about levelling the playing field. I don't profess to understand the intricacies, but I'd like to see perhaps a greater elaboration of the actual experiences that you've had and how they have led to disincentives.

Mr Boileau: We in the hydro industry have seen assessment difficulties in terms of assessment costs on a project amounting to —

Mr Conway: Sorry, I didn't mean it as a new question. I just mean it as something you could perhaps supply the committee with.

Mr Boileau: Certainly.

The Chair: On that note, then, you have an invitation for further input; I hope you'll take it. On behalf of the members of the committee, we thank you for coming before us today with your experiences and your advice.

Mrs Johns: Chair, I'd like to explain where I think Bill 35 may help them. It's in subsection 86(1), where you see payment in lieu being increased for Genco, Servco and municipal electric utilities to bring them into a level playing field. I'm not sure it meets their needs but I wanted to outline that that is the section. I'd like that group to have a look at that before they send in their documents.

Mr Conway: I agree with Helen on this. I think that is the area. Hopefully it is the remedy, but this is a very complicated business. I don't profess to understand it. I'd like them to, if they could, submit some evaluation as to whether that section helps solve their problems.

Mrs Johns: That's why I wanted to bring this section forward, so they would put that into the report.

The Chair: And it's 86(1). Maybe we'll have staff speak to them privately.

Mrs Johns: Valerie Falls Power, could you look at 86(1) in the bill as you're looking at the documentation that Mr Conway asked you to send in and see if that alleviates some of the problems you have?

1130

NORTHWEST ENERGY ASSOCIATION

The Chair: Now calling upon representatives of the Northwest Energy Association.

Mr Larry Hebert: Madam Chair, we'll pass out two maps. I don't pretend in our group to represent First Nations groups but we've shown the First Nations in those communities only as those apply to the province then. Maybe we need a geography lesson. Maybe we're truly in southwestern Ontario when you look at the map.

The Chair: As we look at these maps, then, we'll try to examine them and listen to your presentation as well. Before you begin, you're very welcome to be before our committee.

Mr Doug McCaig: Thank you very much. You had the heavyweights yesterday. Today you have the exciting ones here.

Anyway, good morning. My name is Doug McCaig and I'm the chairperson of the board for the Northwest Energy Association. With me, of course, is Larry Hebert, the general manager of Thunder Bay Hydro and one of the many volunteer staff at the Northwest Energy Association. We obviously have no permanent staff.

During the late 1980s, Ontario Hydro realized some problems and we in district 3, which we represent through MEA, started looking at the implications for our customers. We sent a resolution to our parent body, the Municipal Electric Association, calling for a rationalization of the municipal utilities in this province. Faced with what we perceived as an impending dilemma, a conclusion was reached. We had two options: a co-operative or a single utility. The ensuing argument nearly destroyed the whole district and its unity.

Our focus then pursued the concept of a co-operative. The Macdonald commission complimented our presentation as the best they'd seen for its foresight, innovation and, of course, originality. The rest of our history is captured in the executive summary, which is at your disposal, which is part of our written presentation, by the way.

We represent 11 municipal utilities in our district of northwestern Ontario and all are members by choice, all are endorsed by their major shareholder or stakeholder, the respective municipal governments. We look forward to expanding our customer base to other electrical users in this province and there are meetings in progress to do just that.

Our objectives are outlined in our attachment. The structure of our board represents each and every community in our area. Northwest Energy Association is a fully endorsed, non-profit corporation that is implementing

what is being advocated by the government of the day and driven by competition, which is the key word.

With that, I turn the presentation over to Larry Hebert.

Mr Hebert: Thanks again to the committee for allowing us to be here.

The Ontario government is taking a very aggressive approach to open competition by opening wholesale and retail competition on the same date. Other jurisdictions have not had success in retail compared to wholesale implementation. Even FERC is questioning the wisdom of totally open markets when you have the risk of severe volatility in rates that you did this summer on the spot market for electricity. We all know also how long it took to rebuild the system after the ice storm of 1998. What if there is no power to sell or, even worse, power but no system to distribute it because wrong decisions were made?

Electricity is a necessity in this day and age. If you don't agree, don't phone next time your power goes off. We were without power in northwestern Ontario for up to three hours in some locales in late June of this year, 3:30 to 6:30 in the morning, and many people didn't notice it. Was it a technical/storm-related issue, or were we sacrificed to make a sale on the very lucrative spot-price electricity market? We'll never know.

Despite these risks associated with the open, free and competitive market, we welcome the opportunity to participate in it. We are a group from northwestern Ontario working on behalf of northwestern Ontarians for the benefit of northwestern Ontario. With our proximity to the cheapest power in North America, we are on the verge of a business and commercial boom if we do our job correctly and the Legislature allows truly open markets.

The electricity market is extremely complicated when it is opened and unbundled, so one of the first jobs for any of us is consumer education. We have to ensure customers understand what is happening, why it's happening, how it's happening and how it benefits them. That is a role for the government, the OEB and the various players in the market. We don't want a repeat of the snake oil salesman scenarios that came with a highly unregulated and unlicensed gas market when it opened.

The Manitoba connection: At one point in another galaxy, Ontario Hydro was going to import power from Manitoba — 1989. We all remember the 25-year plan. Why? Power was available, it was hydroelectric power and it was low-cost. The contract got cancelled and, as far as we know, there's still a lawsuit outstanding. But the two main criteria still exist: availability and low cost.

In the spirit of the government's legislation, we have talked to Manitoba Hydro about a contract to buy power and services. They see opportunities here as well. Through further public and private partnerships we'd hoped to move about 1,500 megawatts of power into our area and beyond. It would come down the Highway 17 corridor — and Ontario Hydro has done most of the preliminary work on a route selection for that — and a second corridor would be down Highway 11. Both would come into Thunder Bay and move along the 17 corridor to eventually

get to Great Lakes Power, which we've also talked to. A new line could possibly be built into the Minnesota market along the western shore of Lake Superior. No line exists there currently.

An investment banker from the US, two major Canadian banks, a major Canadian credit union and some of the direct customers of Ontario Hydro have indicated a major interest in this line, and varying degrees of interest, from "No thanks" to "Yes, we'll help," to pay for it directly. Two firms have talked to us with an interest in bringing three new manufacturing plants to our area. One 300-megawatt plant in Thunder Bay, one 130-megawatt plant in Thunder Bay and one 300-megawatt plant in the region are some of the reasons for the Manitoba deal. The US dollar currently and the transportation corridors in our area are other attractions that make it attractive to them. We've also been told some of the mines that closed during the recession may reopen.

Assuming we meet environmental approval, we seek your support in allowing the Manitoba connection to take place. Why? First, it creates construction jobs for the line to be built. Second, it creates construction jobs for the new plants that would be built. Third, it creates permanent jobs in the industries that are secondary to the three main plants. Finally, it creates good-paying, permanent jobs in the private sectors in those plants.

Manitoba Hydro has their own agenda which dovetails with ours. Public and private partnerships equal new jobs, a winner for everyone. If we can get a better deal from Ontario Hydro, we're ready to talk to them now, and we'd enjoy doing that as well.

The Manitoba connection, part II, and the reason I passed the maps around: The second reason for another Manitoba connection is to get more of the remote native communities off expensive diesel fuel and on to the grid. That lessens the cost since about 26 remote communities could be put on the grid. In this case the grid could be a ring bus, fed from two different sources, and as funds become available more extensions could be made to it. We have talked to the federal government, which has a vested interest in seeing this happen since they subsidize the very expensive diesel power in these remote sites.

The grid also allows native groups to develop small hydraulic sites as businesses and sell on to the grid. We would commit to a price for such production. If that helps solve other native issues that we all know exist, then that's a real bonus.

Again, a potentially successful native partnership would be a great one: First Nations, Manitoba Hydro, the NEA and the federal government.

For cogen developers, while we are not prepared to guarantee the rates Ontario Hydro was forced to pay for energy, the Thunder Bay Hydro model, which was developed by Bill Butuk, one of our engineers in the past, pays developers of cogen for both demand and energy and could be a workable solution to the dilemma about contract cancellations.

The white paper allowed for pilot projects. We are currently talking to Genco about a pilot deal until

competition opens to see what a contract would look like. We are also looking at both a real aggregated contract for power which would save NEA members almost \$300,000 a year until competition opens, and we are working with Genco and a consultant on what an ideal contract would look like in the new millennium. We have also offered Ontario Hydro Retail in the area an opportunity to join us as a partner in the pilot project so that everyone in the region is treated the same, and we are also talking to them about a buy, sell or merge deal for the long run.

We have met with the Ontario Energy Board, the Ministry of Energy and the local MPPs have been kept abreast of our plans. All feel we are proceeding as was intended by the government's plans. Most are surprised at how far we have come.

I'll turn things back to Doug to conclude.

Mr McCaig: The government has said it wants MEUs to amalgamate and assimilate. We are doing just that and have been doing so for several years. I would like to point out to you that it was this district that initiated the initial study of the electricity sector through the MEA's institutional options and one of our members was chairman of that group when it started. We want to take an evolutionary, not a revolutionary, approach to things. We don't propose to have a slash-and-burn policy because it would be against our concept of creating jobs, as Larry has pointed out.

The government has said it wants private and public sector partnerships. We are working diligently on those: first nations, existing firms in the area, new potential firms and government bodies. It wants utilities to privatize as OBC companies. The NEA is a non-profit corporation now and one step away from the OBCA requirement.

The government has said it wants to create jobs and we haven't experienced the growth they have in southern Ontario. We are very adamant in our approach to creating jobs in northwestern Ontario to satisfy our regional differences, and this is something you have to be very much aware of.

The opportunity in electricity may be the catalyst and example for other sectors of our region to follow. As I said, our district started the institutional option. We are well on the way to fulfilling whatever the government has requested of the utilities on an amalgamation and assimilation basis. I suppose you ask the question, What are you looking for?" We are looking for you to let us be the pilot project to go ahead with the plan that the government is advocating. We're well on the way. We're further ahead than anyone else, and have been doing such for a long time.

The Chair: You have left us six minutes for each caucus. We'll begin with the government caucus.

Mr Steve Gilchrist (Scarborough East): Thank you both for your presentation. I think it's well known around this table and certainly among the government members that you've been one of the most progressive, if not the most progressive, districts in the MEA and you're to be congratulated for taking the proactive stand you have in

terms of finding lower-cost alternatives for your customers.

In point of fact, the Manitoba example you raised is precisely what we would expect to happen after 2000, once the current Hydro is forced into a truly competitive arena.

You raise a couple of questions in your presentation here and I'd invite further comment from you. You talk about price volatility and the need to perhaps provide some sort of transition or extra protection while at the same time balancing the need to go to a competitive marketplace. In Alberta, where they only went to deregulation of the wholesale end of the business, there have been no great savings that wound up in the hands of the customers. Where there have been the greatest savings are in jurisdictions where both wholesale and retail were totally thrown open to competition very early on.

Have you any examples or specific suggestions on the kinds of mechanisms you think might still allow the protection against the price spikes you talk about, while still embracing the concept of full competition?

Mr McCaig: I'll start it off and then I'll it pass it off to Larry. What we're looking at was recently on the spot market in the United States during the heat wave. The normal cost of electricity is about \$35 a megawatt hour. During the spot market crisis a few weeks ago, the price of electricity went from \$35 to \$7,000 a megawatt hour. Several corporations that were brokers went under because of what happened, brokerage firms that were worth \$150 million each. They didn't have deep enough pockets. This is the kind of volatility we're referring to. The spot market price is very volatile and a lot of things can happen.

1140

Somewhere along the line there has to be a built-in regulation that protects perhaps not the large industries but the individual residential customers. There has to be a cap for the default customers, those who go to the utility and don't really want to have anybody else supplying them electricity. I think that has to be invoked and I'm not sure if it says it in the white paper. I'm sure it's being looked at. But these are some of the things, with the volatility.

Further to that example, I told you we indicated in our proposal that we're ready to go to the private sector. I know that one of the paper mills in this industry took such significant jumps in the spot market price that they would have lost \$1 million a day had a deal not been struck.

Mr Gilchrist: Let me explore that further then because in almost any other commodity we can think of, it isn't necessarily a smooth cost to the supplier. When you pick up the phone and make a long-distance call, it doesn't cost Bell exactly the same to route you to Vancouver as it does to Ottawa, but many of the marketers out there now have a plan that's a flat rate. You pay six cents a minute or 10 cents a minute, no matter where you go. Obviously they've looked at the averages and they've looked at seasonal factors — although there's not much in telecom, although more wires would fall down in the winter — and

they've developed a profit model for them that allows them to assimilate those peaks and valleys.

Why, as we look down the road, wouldn't the energy industry adopt a similar philosophy? Yes, you bite the bullet maybe that one time every 50 years where there's a major drought, but the other times you've built in a little extra margin to compensate for that.

Mr McCaig: Just a couple of things. We have to be very careful when we throw around these terms, major drought and ice storms that hit us once a millennium. It seems we've been hit two or three times this year with these things that happen only once in a while, so we have to be very careful with that.

I think you have to look to FERC in the United States. They are really looking closely at their deregulation policy right now because of what happened in the electricity market. We have to be very careful that we don't try to reinvent the wheel. We can learn by their mistakes and we can also learn by the British mistakes, what happened when they went into the operations at their end. That's what I'm saying. Let's get some regulations that protect the little guy. That's very important.

Mr Gilchrist: One of those regulations: Might it be that the bidding you do to attract a customer should have a set price over a fixed term so that the customer could plan? Again, if in fact you as a supplier have miscalculated, well, that's the risk of being in business, but someone else will certainly fill your shoes if you've made a bad business decision. Would that be an appropriate regulation that we perhaps should have some sort of a contractual obligation that gives a customer a fixed term and a fixed price?

Mr Hebert: That's certainly one possibility. The other option is it's open, it's risky, that's what business is all about, and we just take those risks and have to deal with them as they come. I just talked about it in the paper as a caution, not necessarily something we have to regulate, but that's one way of doing it.

Mr McCaig: What we have to remember is that we're not deregulating, we're re-regulating this whole thing.

Mr Gilchrist: Hopefully with fewer than is the case right now.

The Chair: Thank you. To the official opposition.

Mr Conway: That's a very good point, Doug. It is essentially a re-regulation, although with very different kinds of instruments. It's so good, it's so sweet and attractive, who in their right mind could not run out and embrace this?

Mr Hebert: Thank you.

Mr Conway: I just want to start by saying —

Mr McCaig: Don't give him a straight line. Please don't give him a straight line.

Mr Conway: I have in my hot little hand Ron Osborne's testimony to the committee yesterday, and it seems that master of the telecommunications world, now CEO of Hydro, sounds like he has a different plan. Yesterday I was certainly struck by the clarity and the power of his presentation around their plans to grow the services company, Servco, the retail company. So let me

ask you, what would it take from Servco to make this happen? Presumably there are substantial Servco assets that are at the core of the debate.

Mr McCaig: To make what happen?

Mr Conway: To make the regional co-operative electricity distribution system for northwestern Ontario work as proposed here, complete with the Manitoba interconnect.

Mr McCaig: I think one of the more interesting things that could happen is the partnering with the customers and Ontario Hydro with the utilities. We can all retain our own identity as municipal utilities or NEA, whatever, and we purchase power based on the economies of scale.

Mr Conway: But the more hands in this soup, as some of my friends opposite would I think rightly observe, the more diluted are the efficiencies likely to be. But let me come back to my first question. I like this. I think most of us would like this. It would seem to make a lot of sense, so good that there must be all kinds of problems with it.

Doug, you and I were around for the Bill 185 business, which was a local rationalization that was intended — everybody was onside. We passed the bill to great Te Deums of praise and everybody went and misbehaved. That was just local franchise markets. We couldn't make that happen, and everybody said they were onside five years ago, after 10 years of debate. So my question is, what is the current attitude of Servco to this kind of proposal, and specific to that, what are their assets? What assets have they got in this mix — I can imagine several — that you would have to bring on stream to make the thing work with some degree of efficiency? Because again I say to you, if I'm a customer up on that line, all I want is reliable energy and I want to see a benefit.

Mr Hebert: The easiest answer is they don't have to do anything except let us do it. Technically we don't need any of their assets if we're actually going to construct a new grid.

Mr Conway: All right.

Mr Hebert: If we want to be totally fair in the region, they have roughly 40,000 retail customers in this area. If they wanted to sell for a reasonable price, like \$1 or \$2, we'd be more than willing to buy so that we'd have a contiguous region. We represent 11 municipalities now, but there are other municipalities out there that are direct customers of Ontario Hydro.

Mr Conway: But let me ask you, in talking to others of your colleagues, we have talked generally about efficiencies on the distribution side and I think the committee has agreed that there are some real possibilities there. Surely one of the real issues is going to be how we make that happen, how we create a market in the legislative environment for that to occur sensibly. How do we make people sell or lease at a reasonable price the kind of assets that would be necessary to get the synergy, to get the right mix within a given community or region?

Mr McCaig: Under the present circumstances, it's a symbiotic relationship, as you pointed out, but for all of us to survive in the north, I think you have to appreciate the regional differences and what goes on. If you are looking

at what makes it happen, first of all, it has to be sold to the municipal governments, who are the real stakeholders in the utilities, and that has been done, and we have to give them reason and services to promote that we can protect the people in the north —

Mr Conway: I need to change the behaviour. If I learned anything in the Bill 185 debate, it was people told me what I wanted to hear and they all said, "Yes, ready, I agree," and then they went out and the behaviours didn't change. The behaviours in fact frustrated the very thing that people said they wanted to have happen. That was a minor piece. Now we're into a much bigger, more promising proposition. I hear you today and I heard Osborne yesterday and I'm thinking they say they're ready for a marriage, but I think I need a very bloody-minded counsellor to get them up the aisle, to keep them together.

1150

Mr McCaig: With all due respect, Sean, but I think what is happening is that we have already illustrated by the course of action we have taken previously that we are doing that and getting the necessary attitude and doing the necessary education which the government has said is necessary and that the utility people have to be educated. We're already doing that and we have a great deal of concern for our rural, for our natives and for the large businesses in this area, meaning the paper mills and this sort of thing. They are crucial to our economy. As I said earlier — we're not trying to walk around with halos or anything like that — we have done it for nothing. We are unpaid.

Mr Hebert: Isn't the Reverend Floyd supposed to be the hanging parson who can handle that marriage?

Interjections.

The Chair: Third party.

Mr Lessard: I want to thank you very much for your presentation. One of the things that caught my attention, of course, was what happened on the spot market for electricity during the summertime when we saw this incredible heat wave in the southwestern United States. We know the problems that are inherent with the system. Even if you have excess power, how are you going to get it someplace else and deliver it to that market? So the infrastructure that needs to be in place is something I want to get back to.

You also mentioned that there was a time when you were without power in this area and that you don't know whether you were sacrificed to make a sale to a more lucrative market. You may never know, but I would suggest that's something we need to do know. Consumers should be aware of what may happen. We heard Mr Osborne yesterday talking about his vision in a competitive market and he sees Ontario Hydro moving into the United States. They want to be able to compete in Michigan, Ohio, Kentucky and places like that. When I consider Ontario Hydro looking for expansion of markets in the United States, I look at northern Ontario and say that if it weren't for people like you in this new, competitive marketplace, who is going to be making the investments to develop the infrastructure to ensure that

you have the power here to see the development that takes place in the future? I don't know who that may be in that competitive environment.

That's one of the concerns I have. If Ontario Hydro is looking to the south and other markets, are they going to be load-shedding? Are they going to be getting rid of services of infrastructure here in northern Ontario or other parts of Ontario that are going to leave customers and development at risk, basically, in the future?

Mr McCaig: I can say unequivocally no, for the very simple reason that there is a great deal of hydraulic generation that Ontario Hydro at this time owns in the north and that has to be taken note of. When Larry talks about the Manitoba connection, I think you have to look at it on the basis that Ontario Hydro is very interested in selling into the eastern United States in particular because the market is there, but at the same time, opening up the Manitoba development, it leaves us access to very cheap power. Mind you, going the other way with the power it doesn't open up for Ontario Hydro a whole lot as it does eastern Canada. So you can see what's happening there on a businesslike basis.

But I have to say that Mr Osborne has been very good to us so far in the north in making sure that people are negotiating and are talking to us, and things have been happening in a very positive manner. I will say that unequivocally and I hope you hear it loud and clear because he has been very good with us. There's no doubt about it.

Mr Hebert: Your point is well taken. It's the reason our group was formed to begin with. We had concerns, exactly what you said: Who's going to care about us in this new, wide-open market because we're a very small part of the load of Ontario.

Mr Lessard: We know that consumers may have the ability to negotiate the supply of power. Then I have concerns about their ability to negotiate with power retailers on an equal footing. I have concerns about the peaks and valleys that may come in the price of electricity and consumers' ability to negotiate in basically a futures commodity type of market that they have absolutely no understanding of.

I certainly don't have any understanding of it although I consume products like coffee that are subject to volatility on the futures market. If the price of coffee goes way up I don't have to drink as much coffee, but with electricity that's something that's beyond my control. For businesses as well you need the power or you go out of business.

To compare it to the Telecom market, there may be that smoothing that is available. But here I agree that we need to be very cautious because it is a new reality for us. We need to look at these other jurisdictions for some of the experiences we have because we don't have that track record right now as to how you try to come up with a smooth price of power when we don't know how these peaks and valleys are going to be dealt with and how extreme they are.

Mr McCaig: I'd like to address that question. We've already got the jump on that, Wayne, for the simple reason

that the key to this whole thing is going to be power procurement. We are already in the process of educating a couple of our people, who are employees, in the art of power procurement. I'm not saying that we can throw somebody into the independent marketing office, but we will have somebody knowledgeable, to know how to select the right places to buy. That's a service that Northwest Energy as a group can provide for everybody in this district or in this end of the province, because we've already started that process of education.

The next thing in that process that has to take place, and it will be coming through Northwest Energy and to the end users, is going to be if they decide to select from somebody else, a broker or whatever, we will identify the snake oil salesman, as the government has already done with their 1-800 number if somebody is coming down the road selling you smoke in a box. We are already doing that sort of thing. It's in process. It's our responsibility to educate the people to that.

I will say this also: Having sat on the retail study committee for the MEA, which was chaired by Tom Wells, when we went around this province, I don't think there's a real danger. If we supply that necessary service to our users, they won't abandon us as a utility. That was in the cards and that has been said many times and I've seen many studies that have given us direction.

The Chair: On that note, on behalf of all the members of the committee, I thank you for coming before us with news of your exciting initiatives and appreciate your input on this.

Mrs Johns: Madam Chair, just before lunch I have a question of the legislative research group. Mr Lessard has made this comment a number of times about the spikes in the market on those two days. It's my contention that those spikes represented a very small volume level, and what happened was that a broker went short and got caught with his pants down and got his just reward.

I would like to see how much volume traded at the high spikes on those two days so I'd like you to get that for us, please.

Mr Conway: If I could, just speaking to that point, I think that is very useful information to have. My memory is that sometimes, just two or three weeks ago, there was quite a lot of commentary in the financial press. I remember a utility in Cincinnati leading a charge to Washington saying, "It's terrible what's happened to us." I think there were one or two articles in the Wall Street Journal about it.

It would be something that I think would be useful for the committee to have, just to see what the nature of the difficulty was, because there certainly seems to have been some.

Mr Baird: Is it possible to see if there were any articles?

Mr Conway: I've actually got a couple from Reuters.

Mrs Johns: We'll be hearing from Nymex on this issue too, but I'd like to have the numbers associated with that.

The Chair: We are going to adjourn for lunch then. The legislative staff has your instructions. There are places reserved for us in the restaurant here. It's a buffet lunch, so we can get through quickly and we'll reconvene here at 1:30.

The committee recessed from 1202 to 1336.

THUNDER BAY HYDRO

The Acting Chair (Mr Doug Galt): We'll reconvene the resources development committee. Despite a request by the opposition for a motion to adjourn, we'll continue. The first delegation is from Thunder Bay Hydro, and I believe it's Larry Hebert and Paul Kennedy, commissioner. You have 30 minutes for presentation and question-and-answer period to use as you see fit.

Mr Paul Kennedy: We'd like to thank you very much for the opportunity to appear. Before we start taking up your time with the presentation, we'd like to tell you a little bit about Thunder Bay Hydro. We have 48,000 customers in the area. We're one of the second-largest geographic utilities in the province. We have a large rural constituency. We're the 10th- or 12th-largest utility overall in the province. We are measured third in reliability of all the large utilities across the province. We spend a lot of time being a good utility and that's why we think we can be here and take up some of your time.

Our commission is very supportive of the move to open markets. We have been one of the leaders in the development of the Northwest Energy Association, which you heard from this morning. We think they're going to do a lot of good things and we're going to continue to support them.

Three issues are paramount for our utility. They are the stranded debt issue, the potential loss of local control and the development of real competition. Many other issues are of concern but they are being dealt with by the MEA, which is our representative at the Ontario level, and by other utilities.

With regard to the stranded debt, no other jurisdiction in the world, and we're sure you'll hear this elsewhere, that has moved to open competition has had to deal with a stranded debt of the size of Ontario Hydro's. Their chairperson has suggested a \$10-billion to \$30-billion stranded debt that should be written off into a financial holding company. Some have suggested the amount should be the \$30 billion. We're not sure that's the way to go. There are some points to consider around this issue.

When establishing the level of the stranded debt, which we all understand has to be ascertained, we should consider the following:

The amount of debt left after subtracting or establishing the stranded debt cannot be so crippling as to make Genco or the new Ontario Hydro uncompetitive.

The stranded debt write-off cannot be so great as to reward Ontario Hydro and its successor companies for mismanagement and poor planning over a number of years. Where has the revenue gone that was supposed to be paying down this debt over the last few years? Ten

billion dollars should be in the nuclear decommissioning fund. There's zero there now. Ontario Hydro estimates they still need \$15 billion in this account to deal with decommissioning.

The stranded debt amount must be established at a level to encourage positive, businesslike decision-making at the new Ontario Hydro companies, up to five companies. They have to start listening to their customers and responding to market forces, not living in a land of forgiveness, where they don't have the debt that they created to deal with and bring them competitive discipline.

We'd like to ask how a stranded debt amount can be assigned across all of Ontario Hydro's assets when the bulk of it has been developed through the debacle that became the construction of the Darlington nuclear station. A lot of that debt in an ordinary business world would attach to the asset where it was created.

The stranded debt recovery should be done through the transmission system so that all users pay a common charge at a common point. The recovery should not be done through a tax or levy on gross revenue for utilities.

First, if you want to be fair, it should be transparent and a charge on transmission does that. If you try to attach it as a levy to gross revenue, then you are not allowing municipal utilities to truly act as corporations established under the Ontario Business Corporations Act, because normally businesses are not taxed on their gross revenue.

There should and must be a sunset clause on any levy associated with the stranded debt because once it's paid down, there's no reason for the levy to exist any more other than as a permanent tax with another clever name hung on it.

We'd like to talk to you briefly about the potential loss of local control of distribution utilities. Local control is a concern for the Thunder Bay Hydro commission. We spoke to you in the introduction about the time that this utility has spent being efficient, being productive and servicing their customers well. We think that control at the local level is the best way to ensure that that continues.

The Ontario Energy Board is going to have the right to regulate and license and basically assign franchises in this new era of competition. The municipality did that previously. Is the relationship between the municipal council and the new Ontario Business Corporations Act utility going to be an arm's-length one? Will there be protection built into the regulations to protect utility revenue beyond any local fees and grants in lieu that the bill requires? Are our hydro rates only going to pay for hydro distribution and not become another way of disguising taxation for a municipality? This is a concern at this time. Currently, electricity revenue cannot be used to subsidize city services. We would like to see it ensured in this legislation that it can't change from that because it's not that way now.

What restrictions, if any, are placed on council in appointing the board members to the new Ontario Business Corporations Act distribution companies at the local level? Local accountability will be very important. Local

accountability has been what has made Thunder Bay Hydro a responsive competitive entity.

There are examples now of problems with decentralization of accountability and we have somewhat facetiously written down a 1-888-NO-RESPONSE call centre number that a lot of Ontario Hydro's rural customers are having a lot of trouble with at this point in time.

Mr Conway: That's nasty.

Mr Kennedy: That's his work, not mine.

We'd like to talk to you about real competition because we think that the act has to strive to create real competition across the province.

How is the government going to ensure true competition when Ontario Hydro will still control a huge percentage of the generating capacity, Ontario Hydro's successor? How are private firms in existence going to be competitive when their long-term contracts are going to be terminated and/or their role in the energy market in Ontario has not contributed to the Ontario debt?

The expectation is that bills are going to go down. Realistically, how will this happen in the short run? If Ontario Hydro or its successor in generation can't be made more competitive and new charges are put on transmission to recover the stranded debt which is being transferred to a holding company, how is the consumer going to see a saving? We are building up a lot of expectations here about lower rates in the future but we're not building the framework quite right to deliver that.

The initial efforts of the government to rein in control of Hydro in a very complex and challenging environment are to be applauded, but we think perhaps we're seeking the savings at the wrong end of the vertical integration spectrum, the distribution end. We think we have to find more savings at the generation end. This is basically an area where the real competition should be seen and isn't being introduced.

Instead of working on the problem of efficiency in generation, the government is providing a format for Ontario Hydro to become one of the largest vertically and horizontally integrated energy companies in the world and all of this has been merely an academic exercise to camouflage that plan. Is this what the government intends?

True competition should benefit the majority of customers in the province, whether large industrial or small residential. If Bill 35 can do that, then the end result may justify the means.

That's our presentation in a nutshell. We think the legislation has to work a little bit harder at creating real competition at the generation level.

We hear folks were intrigued this morning with the fact that we may get some competition in this area using the NEA perhaps to play off Manitoba against what's left of Ontario Hydro's generating capacity. We are geographically fortunate to be able to do that. There may be some areas in southern Ontario where geographically they're just across the border from the States and can do that. But overall in the province we're probably not creating a competitive enough environment.

We think local control is important and we think you'll hear that a lot of places. We hope you take it to heart in your recommendations. We think that the debt that should be left to Ontario Hydro's successors should be fair and should challenge them, as debt does any corporation, to be more efficient in everything it does from this point forward. That's our presentation.

The Acting Chair: Thank you very much for the presentation. We have approximately five minutes left for questions and statements from each of the caucuses. If I remember correctly, it was the third party that started last time, and we will start with the government caucus this time, split between Mr Baird and Mr Gilchrist.

Mr Baird: I want to thank you for your presentation. We appreciate hearing the views of local hydro utilities. I think among the general public, probably more than any public service, there's a tremendous amount of public regard and respect for the service they've gotten from local Hydro utilities, so we appreciate getting your thoughts.

You've spoken in your presentation a lot about debt, stranded debt and residual debt and assigning that debt, and I can certainly appreciate why because I think we're all concerned about that. I have a number of comments and I ask for your thoughts on those. We're certainly concerned. We've heard a lot about the stranded debt in our deliberations. Like my colleagues, I try to look at these things like a consumer. Right now we're spending about 40, 44 cents on every hydro dollar towards paying off that debt. You might like to think of how much lower your rates would be for your customers and my constituents and all of us if we didn't have to pay that. But obviously, in any equation that has to be done. I agree with some of the points you've left us to consider to ensure that the debt left with the successor Ontario Hydro companies, whether it's Genco or Servco, is enough so that it won't be crippling and will let them be competitive. At the same time, it's a delicate balance.

We've got a team that's been brought in from the private sector. It was an open process. Goldman Sachs, Midland Walwyn and CIBC Wood Gundy are working very hard to try to see where you can assign that debt to each of Genco, Servco and the Financial Corp to ensure we get it right. We'd all like that today, but we want to make sure we take the time to get it right. I take it from your presentation that will be an important point to consider.

In terms of the tax revenue, we want to have a level playing field. If the only team on the field was left without having to pay taxes, it would still be just a one-team league. That's why it's important that we get it right.

I particularly like point 3 in your points to consider, on page 2, that we want to ensure we're "not living in a whimsical never-never land." It's a point well taken.

You made a number of points I would just comment on, to ensure that any potential CTC goes exclusively to the electricity sector and the stranded debt within it. That's a point very well taken that I'll certainly take back. It very much is the intention and one with which I don't have a

problem and would agree. As well, the tax revenue from the existing taxes should be assigned to that debt as well.

The power of Ontario Hydro in generation — this comes to another point you made with respect to Genco. Some think even with subjecting them to a competitive tax structure in terms of the equivalent in the private sector, Genco would still have too much control and power in the market. Have you any suggestions or ideas for us on ways you would alleviate that in terms of the power Genco would have in generation? Some estimates have said it could be a 40% reduction over time in terms of their loss of market share. Is that still enough? What is your experience?

Mr Larry Hebert: It's really selfish from a northern Ontario standpoint. We could say, "Shut down the nuclears," because they don't affect us very much, but certainly they affect a number of you, so we won't say that.

Mr Baird: Bruce is in Helen's riding.

Mrs Johns: Thank you very much for that.

Mr Hebert: Only for a short time, Helen. They can turn it back on anyway.

It's a difficult decision, what to do with Genco. We realize that's something you as members of the Legislature have to deal with. It depends on the philosophy. We talk about it in here, and it was commented on yesterday, that certainly the powers that be in Ontario Hydro, Mr Farlinger and Mr Osborne, make it pretty plain they want Ontario Hydro to become a large, vertically and horizontally integrated company. If you're going to support that, you don't want to break up Genco any more than it is. In fact, you probably want to give them even more power. If that's been the object of this whole exercise, it's been a nice academic exercise but it really hasn't got at the true problems of what's happened in this province.

On the other hand, if you want to sell off the generation, I guess that's partially what you can do. It was suggested in Macdonald to sell of river systems and I'm not sure that's a good idea. In this area there's only thermal and hydraulic to look at. You could put it up and test what would sell in the open market. That's one way of deciding what to do. I guess you'd have to do that on a staged basis, because you don't want to sell it all at once, I don't think.

Mr Kennedy: And you'd have to do it on a basis where you asked for people in the business community, for example, to come to you with a proposal on the various packages of assets. You can't let anybody come in and cherry-pick the good ones. If you're going to test the market, you've got to say, "Yes, but you've got to take one of those and one of those and one of those." You don't get to just take all the good ones and say the heck with everybody else. So there probably is a way to use the market to at least test various theories. There's no reason to just assume that Genco has to stay with every generating asset in the province.

Mr Baird: We don't want a fire sale.

The Acting Chair: We're well over the five minutes. Sorry, Mr Gilchrist. We'll move on to the official opposition.

Mr Conway: It was a very good exchange and I think, Mr Baird and Mr Kennedy, you've come to a central point. We all want the benefits of competition. Competition on the big part of the bill, the generation bill, which is 70% of the bill, is what has to deliver the benefits we all want. I think we're all agreed on that. The problem we have is that we've got a policy that says we can't do some of the things that we are told by experts, including the Market Design Committee and the Macdonald committee, are necessary to get at that.

I come back to this same line of questioning. I want competition. I don't want a fire sale of public assets either. But Macdonald said you had to unbundle. You didn't have to sell them off, necessarily, but you have to break them up into competing units. You might have to take on some private equity in some fashion. Maurice Strong said that. This is a very tripartisan bunch of advice we've got here. We've got a real mess. Helen and I, some of us, sat through that hearing last year for three months. I don't want to sell off the patrimony of this province. Public power has brought us a lot of benefit. But Ontario Hydro undressed itself in front of the whole province this very day last year. I don't want now to feed any more of their imperial powers, on the basis of their recent experience.

My question to you would be, can you imagine, either one of you, an unbundling of the Hydro assets that would on the one hand reduce the market power of Genco, create competition to a greater extent and not sacrifice valuable public assets to some kind of fire sale? Is it possible to meet those two or three objectives?

Mr Kennedy: I think everyone's agreed that a fire sale is not possible, because that leaves the people —

1350

Mr Conway: It's not desirable.

Mr Kennedy: It leaves the people of Ontario eating a pretty big chunk of debt too, so it's probably really not possible politically either. I guess anything's possible. You've got to find a way to create an environment that shows that the debt can be transferred to a holding company or whatever and through the judicious use of transmission charges can be retired. You've got to attach proper levels of debt to the assets.

I think the best way then is to go to the private sector and say, "Look, we're not going to give anybody all the nuclears or all the hydraulics or all the thermals, but you can partner up, you can take one of each in franchises or concessions, perhaps in different areas." You can go to the private sector a lot more and work with them on what might work, because that's where you're going to find a lot of good ideas, not necessarily from people sitting at this table and coming to your hearings. If this is going to work, it's private sector people and private sector smarts that will make it shine.

Mr Conway: In northern Ontario, Larry, maybe you can tell us, what is your load here in the city of Thunder Bay?

Mr Hebert: On average about 170 megawatts.

Mr Conway: What's the source of the electricity for that load?

Mr Hebert: In the area, Ontario Hydro and cogens have a total maximum capacity of, I think it's 1,410 megawatts, and the maximum load ever in the area was about 1,127 megawatts; that was back in the late 1980s.

Mr Conway: Looking at the region of Thunder Bay and west, the NEA region, I suppose I'd call it, regional load and regional generation would give you what kind of excess or supply, as it is now, with very conservative assumptions on the generation side?

Mr Hebert: On the generation side there's always stuff down for servicing etc. With everything running at a reasonable level of water in holding ponds etc — because it's been a tough year for rainfall in the area — there would be enough to supply the area. We'd probably be talking about loads, on average, anywhere from maybe 700 to 900 megawatts.

Mr Conway: A final question on the tax: The bill contemplates a range of six charges, the last one of which, in fairness to the finance people, the competition transition charges, are likely the least attractive option, according to their paper. Which of the other five charges would you least like to pay? You've looked at the bill. I'm looking at the other five. You're obviously going to pay some of them and not others. You don't like the charge on your gross revenues, obviously.

Mr Hebert: Right.

Mr Conway: But you do accept that there is going to have to be a reasonably fair tax regime.

Mr Hebert: Just not on gross revenue. Regular businesses don't pay it on gross revenue.

The Acting Chair: We'll have to move on to the third party.

Mr Lessard: Mr Kennedy, I don't think you should discount the value of your advice at all, because one of the things I've been finding through these hearings so far is that this is an incredibly complex area and that there is no monopoly on solutions as to what it is we can do to try and address the problems we all recognize with Ontario Hydro.

I really am interested in the benefits of competition as well. I'd like to see rates go down. I'm attracted to that suggestion by the minister, that we're all going to benefit from lower rates as a result of Bill 35. But one thing we've heard is that it isn't going to happen with the set-up we have, if the supply all comes from one place. I don't want to see the privatization of Ontario Hydro. When we're talking about many of the generating facilities, we're talking about public resources that we have a public interest in maintaining as well. I'd like to see some suggestions, if you have any to offer, that may lead to more competition in the generating sector, but still enable a predominant public investment or co-operative investment or an investment by utilities, something like that rather than strictly the privatization of Ontario Hydro. That may be where we're leading.

In the final submission you make, you ask, if this is the government's plan, to make Ontario Hydro an even larger vertically and horizontally integrated company, why don't they just say that? I wonder that myself. Why do you think they may be doing this? What's your theory?

Mr Kennedy: I'm uncertain of the answer why that would be. Obviously, the corporation is close to the government. The corporation has had numerous opportunities to try to steer the government towards various solutions, but the solutions that the corporation seems to be pushing are solutions that don't really diminish their market power that much, don't really diminish their size or cause an increase in their efficiency. Basically, the main thing just seems to be to get the debt monkey off their back and on to everyone else's.

I can't answer why the legislation seems to go that way and not go far enough in terms of creating competition, but I could say if I was Ontario Hydro and I was an entity looking to sustain myself, that's what I'd be doing. I think they've done a pretty good job of it and it's up to your committee as you go around to see this and listen to what people are telling you and come out of it saying, "No, we've got to do a little bit more."

Mr Lessard: I thought we were going to hear an explanation from Mr Baird, but he didn't get a chance to include it in his remarks.

Mr Hebert: I think Ontario Hydro is in a dilemma, obviously, as is the government on this. Perhaps the two things they want to do are banging against each other. They want to compete in the US. I think that was said yesterday to the committee. Maybe we need, whatever it's called, Ontario Hydro International, for a working phrase, that is a large, fully integrated utility, vertically and horizontally. Then there's a domestic, if we can call it that, Ontario Hydro, that is broken up more. It's not easy to divide those up either, but maybe that's really, in the long run, what we're looking at: domestically a very competitive market, but when Hydro is international in terms of the US it is this huge utility it seems to want to be now with Mr Osborne and Mr Farlinger indicating that. Certainly in the last little while it seems to be where they've been heading in any comments they've made.

The Acting Chair: Thank you very much for your presentation. We appreciate your candid response to the questions and wish you a good day.

We'll now call on the next delegation, Environment North, the presenter, John Boulter. Is he present?

1400

ENVIRONMENT NORTH

The Chair: Good afternoon and welcome. Please introduce yourself and your title for the Hansard record.

Mr John Boulter: Good afternoon. My name is John Boulter. I am an executive member of Environment North, which is a local environmental group, a small but active Thunder Bay environmental group. Welcome, to the members of the committee, the honourable members who have seen fit to come to Thunder Bay to listen to this. I

apologize in advance that my presentation will be much different than the ones you've heard and it won't be too welcome to some ears because my organization and myself are more conservation-minded and futuristic-minded and perhaps not so much involved with profit and development.

Bill 35, which seems to be mainly involved with the financial and operational reorganization of Ontario Hydro, has in our opinion some serious shortcomings for the future of the people of Ontario.

I don't have to tell you that Ontario Hydro is facing some horrendous problems: how to meet the energy needs of Canada's most populous and industrialized province, yet an energy-poor province. We have no important coal, petroleum or gas resources of our own. Unlike northern Quebec, which is mountainous and capable of producing hydraulic electricity, most of Ontario is relatively flat, even the north, and has limited potential for future major hydroelectric projects.

Our enthusiastic commitment to nuclear generation has left Hydro with a legacy of debt, operating problems, safety concerns and disposal nightmares. Hydro-Québec by contrast, based on hydroelectric development, has been described as one of the most profitable enterprises in Canada in terms of operating efficiency and profit. It is inevitable that the government seek to reorganize Ontario Hydro with emphasis on opening up opportunities for competing agencies to supply a portion of our energy needs, yet I strongly urge the government in the interests of younger and future citizens to place a great deal more thought and emphasis on the present conservation of electricity.

No one, except perhaps a few scientists and intellectuals, seems to have the slightest idea of the chain of interrelated events and perhaps disasters that will befall industrialized societies when conventional energy resources begin to run out in the 21st century. During the past couple of centuries we have gone from a simple society where people were rather independent and self-sufficient to our present mega-urban way of life in which people are no longer self-sustaining but are totally dependent on artificial means of staying alive. We totally depend on other agencies to grow and bring us our food, our water and our basic needs, and to keep us warm. Many of us can't even get to the front door of our residences without power to bring us there, and if that isn't a sobering thought, I don't know what would be.

Future generations will condemn us of the 20th century in harsh and bitter terms for our self-indulgence and greed, our self-centredness, our short-sightedness and even downright stupidity. Yet we go on increasing the population of a bitterly cold country, encouraging immigration, developing farmland and open spaces into freeways, subdivisions, warehouses, fast-food joints and parking lots, of which we already have far too many.

I realize this all goes far beyond the scope of Bill 35, but it is very definitely related. As a people, as a province, as a country and as a world community, we need to change from a profit, greed and development mentality to a

conservation and sustenance mentality, and Canada should be taking a leading role in this initiative.

A few years ago and for a short time Ontario Hydro changed its "Live better electrically" message to one of conservation and some people actually listened to that. They were asking consumers to be less wasteful and to reduce use of hydro at peak hours. That campaign was relatively ineffective, I think, and relatively short-lived. Although a few people did try to comply, I'm sorry, but most people are generally too uncaring and too self-indulgent to even think about changing their wasteful ways.

I suggest that enormous amounts of electricity could be saved, that is, not generated at all, if people, businesses and industry could be persuaded to do things like shutting down unused equipment, operating air conditioners at a lower level or not at all, setting thermostats lower, not plugging in the car at work or school on warm winter days just because it's free, and so on and so on.

Industry, and that's largely employees of industry, could likewise save even greater amounts of electricity by shutting down equipment that's not in use and by eliminating wasteful practices, and so could construction and design save enormous amounts of energy and electricity if buildings and industries and cities were designed in a conservation mode rather than a wasteful mode.

In my opinion, to me it's quite clear that our economy over the last 100 years or 200 years, especially during the 20th century, has thrived because we were blessed with unlimited natural resources, a rapidly expanding population and cheap and plentiful supplies of energy. All of these things are running out, except the growing population.

I suggest the public needs to be educated on the need to save as well as how to save. For instance, in my family, in my own house, we've reduced our electrical consumption for a three-bedroom home to an average of 560 kilowatt hours per month over the past year, yet we still live very well — no Jacuzzi, though, and no air conditioning. If a million households in the province could do as well or better, that is, reduce their consumption by 5,000 kilowatt hours per year each, could that not shut down one nuclear plant or save the construction of a couple of coal-powered stations with the resultant emissions?

I'm suggesting that Hydro must tell and educate people how to save. Shutting off a few lights or avoiding a Christmas tree is not very effective. It is the heating and cooling equipment and electric motors that gobble large amounts of electricity. Construction and retrofitting standards need to be changed. Things like water pre-heaters, shorter runs of plumbing and pipe insulation, proper ventilation and refrigeration equipment, more efficient supermarket coolers, lower water temperatures, all of these and countless more could make an enormous difference.

Only a minority of people will voluntarily comply with such programs. The majority will only respond to much tougher measures, that is, higher rates, especially if hydro rates went up at higher levels of consumption and not the reverse, as at present, where the more you use the cheaper

it gets. Higher rates would also be effective if part of the increased revenue was set aside for developing alternative energy sources, either public or as low-cost loans or grants to private developers. Extra funds, as has been mentioned here, are also needed for safe and permanent storage of nuclear waste.

1410

Most people will complain bitterly about any suggestion of higher rates, and I don't want to get my windows broken or my tires slashed for saying so, but electricity in fact is cheap, very cheap; it's a bargain. If anyone doesn't agree with that, try offering them double their electrical bill back to do without it.

Ridiculously low energy costs, for example, the price of gasoline in the United States, contribute greatly to our mentality of waste. In Italy, by contrast, gasoline costs the equivalent of C\$1.60 per litre. The Italians are much more frugal than we are and yet their economy plods along just the same. You don't need a PhD in economics to know that raising energy costs will have serious effects on the economy, on jobs, on corporate profits, on dividends to shareholders and so on, and thereby lies the responsibility of senior federal governments to use pressure and persuasion to get other countries worldwide, especially major industrial nations, to do the same so as to equalize the economic effect of conservation.

With modern and future technology, we can in fact learn to get along with much less. Solar power and 12 volts, for example, can easily be adapted to domestic lighting applications, and higher electrical costs, higher electricity charges will help finance research and development in these renewable areas.

Why should conservation be written into the act and not just left for regulation or policy? Because if it is made into law, it cannot be left to the whims of whatever political group or temporary interest comes along at a particular time; it is permanent public policy.

I'd like to touch just briefly on emissions as well. Ontario Hydro's increased use of coal to compensate for unreliable nuclear generation has contributed, in my opinion, to 1998 being the smoggiest summer on record in southern Ontario and has increased emissions of the climate-warming greenhouse gases, carbon dioxide and so on, contrary to the 1997 international Kyoto agreement.

Also, caps are urgently needed on all fossil fuel emissions, by Hydro, by industry and by other entities, and they should be applied to all electrical generating plants. These caps should be applied to sources of imported electricity as well.

That concludes my presentation. If you have any questions or comments, I'd be glad to do my best.

The Chair: Thank you very much. We have five minutes for questions from each caucus. We'll begin with the official opposition.

Mr Conway: Mr Boulter, thank you for your presentation. It is very stimulative. You make very strong arguments, some of which I would accept and some of which I disagree with. Let me start with some disagreement.

Where I live in the Ottawa Valley, I live a stone's throw from the Ottawa River and I represent a county with several large hydroelectric dams, some of which are more than 70 years old. I kind of resent the suggestion that people make that those power-producing hydroelectric dams are without environmental consequences when they do have them. I can tell you, every spring I get a flood of phone calls from people who are very annoyed at the owner and operators of hydroelectric installations. That's not to say that we shouldn't have them, but they are not without their problems. I like the fact that they are perpetual. I like the fact that they produce very attractively priced power. I think it is the cheapest power in our system. Help me, somebody, it's a cent and something. But I'm sorry, these things are not innocent and benign. I often fantasize and think, could we build any one of them in my county today? We probably could, but boy, it would be a fight. It would be one hell of a big fight.

You see the difficulty I have in this debate is the religion. The nuclear stuff, boy, it's hard to defend it these days. I don't have any coal, but I can imagine being pretty excited if I had some because I don't like the smog either. I just want to know in a modern economy with apparently — maybe 25,000 megs is too much. I accept, I completely agree with what you say about conservation, but how do we find the balance? What should I do about those people who phone me with those nasty, nasty complaints about hydroelectric consequences in the spring from an environmental point of view? Let me start with that question.

Mr Boulter: I can't tell you what you should tell those people.

Mr Conway: God, I want you to tell me — anything. Help me.

Mr Boulter: That's why you're an elected member and I'm not.

Mr Conway: Oh, no, no. Because you made a very strong speech here and I like a lot of it, but I need some help. I've got somebody who's bloody well got a flooded basement and a flooded front room and they think — sometimes with pretty good evidence — that it's a hydro dam that's done it to them. So help me with that complaint.

Mr Boulter: Those people, I suggest, are strongly represented in the environmental movement because for many of my fellow environmentalists the word "hydro dam" is a curse word to them. They hate the thought. But I'm suggesting that hydraulic power is one of the least evils that we're facing and certainly nowhere close to, as you mention, nuclear and it doesn't produce the problems that a coal plant does.

Some of your constituents might say, "Instead of damming up the river, let's have a natural gas plant because natural gas doesn't produce any emissions or any problems and it's nice and clean." I'm sorry, but natural gas does produce an enormous amount of emissions. My house furnace in the middle of winter produces up to 20 litres of water in a day and that water yesterday was oxygen or atmosphere.

Mr Conway: Just let me take you up on a supplementary on that as my last question because, you know, two or three generations ago we would have been here saying and expecting that all of the load in Ontario would be produced by hydroelectric means. A generation ago, we would have been here saying, "We're going to produce some of it by hydro but more of it by nuclear."

Today, the operating assumption of most utilities that I find in the eastern half of North America, probably across the continent, is we're going to meet most of the new load requirement with gas-fired electric. That seems to be not just the operating assumption but the explicit statement of most utilities. I want you to tell me from an environmental point of view what we need to concern ourselves about that as hundreds of millions of consumers east of the Red and Mississippi rivers all do the same thing at the same time.

Mr Boulter: I would suggest that you find out how much natural gas there is because I don't know.

Mr Conway: Lots, apparently.

Mr Boulter: So the producers tell us, but I'm not sure if they're necessarily telling us the truth. When it runs out, the bad news will come very quickly.

Mr Conway: What are the environmental consequences?

Mr Boulter: Environment includes the fact that in January it's going to be minus 30 degrees out. We're tropical animals and we need to stay warm and stay alive. What I'm saying is, during the next century things are not going to be terribly rosy. Things are going to go from bad to worse, unfortunately.

Mr Conway: Thank you.

Mr Boulter: What is now a Third World country will be perhaps as well off or better off than we are 100 years from now.

Mr Lessard: I think you've really identified an important issue in Bill 35. From my perspective in reading the bill, the policy that's outlined in here really just encourages consumption because what it does is open up the market to competition and that means that other people than Ontario Hydro are going to be able to supply the Ontario marketplace and the encouragement will be to maximize profits and therefore sell as much electricity as you possibly can to the market. There really doesn't seem to be any initiative built into this bill whatsoever for conservation measures.

One would have hoped that in the past Ontario Hydro would have taken more initiative with respect to conservation, because the reality is that we wouldn't build any more nuclear power plants in Ontario and we probably would have a difficult time damming rivers for the reasons of environmental concerns and also aboriginal issues where the land that would be taken as a result of damming rivers may interfere with land claims. That really leaves us with natural gas and coal. In my area — I'm from the Windsor area — we're faced with the very real concerns about smog from the Ohio Valley. We see the coal-fired plants looking to Ontario as an opportunity to export their

power and we end up with the bad air in southwestern Ontario, so that's a very real concern I have.

I agree with you that we need to have some conservation initiatives in this bill to avoid the prospect in my area of having cheap, dirty, coal-fired power come from the Ohio Valley into our area. We may end up with lower electricity prices, but the consequence of increased emissions is something I don't really want to have to deal with.

Mr Boulter: You can turn on the lights but you can't breathe the air.

1420

Mr Lessard: That's the choice. In your submission you've indicated that those choices are difficult ones, and I wonder if you have some suggestions to offer as to the way we can put those conservation initiatives in this bill.

Mr Boulter: How to put those initiatives into the bill is very difficult to outline in a short time. The bill should have to make a very strong statement about conservation without getting into the nitty-gritty of how it can be done or what can be done, because there are many ways we can save electricity and avoid generating electricity by getting people in industry and business and government to consume less, and by going more to what we call green power, to alternative sources of energy.

I recall seeing a hillside in the south of Spain that was covered with windmills and they were all producing current. I don't know how much, but there was a whole chain of them, a mountain range covered with windmills. I was very impressed and I believe the same thing happens in windy areas in southern California. Ontario Hydro is doing something along those lines up in the northern communities and that's wonderful. I really applaud those sorts of things.

Mr Lessard: You've mentioned a couple of ways. One is to increase the price of energy and therefore use the market mechanism to establish those conservation programs or reduce the consumption. But I agree with you that there need to be some regulatory initiatives to do these things.

Mr Boulter: It has to done on a worldwide basis, and especially trying to involve the United States, the Americans, because obviously if they continue their wasteful ways and insist on using lots of energy at low prices, using ours, it doesn't matter what the rest of the world does. Then we won't even be able to compete with them in any way.

Mr Lessard: One of the arguments we get from this government is that a lot of those regulations are just red tape. It was the NDP government that required more insulation in basements, for example, and that was a regulation that this current government got rid of because it increased the cost of houses. But those are trade-offs and I think we need to have those regulations to make homes, for example, more energy-efficient. I hope that if there are some other suggestions with respect to mechanisms we can put in the bill to increase conservation, you'll provide those at a later date.

Mr Galt: Thank you for your presentation, a very practical presentation, one that it's very obvious you're genuinely concerned about, the environment. I would just like to make a couple of comments as it relates to this particular bill.

This bill, as it relates to environment, is enabling legislation so that regulations can be written to address the concerns you have expressed. We are concerned essentially with those concerns that you have expressed in your presentation.

You should be aware that at present there is really no easy way for any producer of green power to get it on the grid, so with this bill that will be possible. At present it's very easy — there are really no regulations — on the importation of dirty power. Right now it's the cheapest power that can be purchased into Ontario, so we're in a present position of almost the encouragement of dirty power to come into this province, such as the Ohio Valley that's been referred to many times.

It's interesting that Mr Conway makes reference to what's normally considered as green power, Hydro-produced electricity and some of the problems there. You alluded to being in Spain and seeing the beautiful hillside of windmills. I can imagine what would happen in this country with a beautiful hillside of windmills. We'd have protest rallies galore over the cutting down of trees or taking over farmland for those windmills or for a bunch of solar panels. There is always a drawback to whichever one you come at. I'm not being critical of them, but there are some problems with the various solutions we have. Granted, I still agree with you that it is green power.

Competition, along with this bill providing choice, is really the catalyst to give people that opportunity to purchase green power. I think it's interesting, a quote from a man who presented yesterday, Kevin Jardine from Greenpeace, and he was stating the significant chunk of the public that wants to buy green power. I don't think there is any question; there is a significant number of people out there who really do want to buy green power.

I would think that with these things in mind you'd be quite happy with this bill, that it's come quite a way. Maybe it hasn't come as far as you would like, but I'm also rather surprised to have an environmentalist present to us about non-renewable energy such as gas. I would have thought an environmentalist would have been opposed to using non-renewable energy in the production of electricity. I know you're referring to it being very clean in emissions, and I fully agree with you that it's an awful lot better than dirty oil.

Coming around to a question, what in your opinion is the most important measure we can take to ensure environmental protection in this whole electricity restructuring?

Mr Boulter: Excuse me, perhaps you misunderstood me. I didn't say that I approve of natural gas being used for generation of electricity. I was alluding to Mr Conway's constituents.

Mr Galt: I interpreted you being very enthusiastic about it.

Mr Boulter: No, I was not enthusiastic. I said, "Ask your constituents what they do when the gas runs out." I'm sorry, what was the additional question you asked?

Mr Galt: It relates to what area you think is most important in the electricity restructuring to be protecting the environment. Should we be going abroad? We're already looking at regulations with the Environmental Protection Act so that will extend to those people who want to import power into Ontario. What kinds of things do you think should be most important? Setting standards, environmental performance standards on those particular producers outside the province? Looking into emissions reduction trading where you ratchet down the emissions being allowed? What kinds of things should we be looking at? Would you be part of this program, because we're now into consultation and very anxious to have people such as you involved?

Mr Boulter: Do we agree then that we will be importing power? I know that at peak times we import power even here from Manitoba.

Mr Galt: We already do that. This is a competition act, I think it up.

Mr Boulter: I would be very concerned about the sources of that power, yes, how cleanly it's being generated. But I still think that conservation right here in Ontario is the key element, if you could get everyone to conserve, to reduce their Hydro consumption by a third or a quarter, especially at peak hours. Even when Hydro was having this campaign, you still had the kids come home from school and turn on three different televisions in the house and three different video games while mother has the oven and the cookstove going and someone else is having a shower. As I understand it, this is what is killing Hydro's capabilities; it's the peaks, putting out that power at those peak demand times.

In spite of my pessimism, people do listen. People will pay attention. Sometimes it takes a while. With some of them, it doesn't sink in right away, but many people will listen and will cooperate.

Mr Galt: We're going to have to relate that as that switch goes on, four more shovels of coal goes into the —

Mr Boulter: Perhaps you could even put an addition to their Hydro metre so that a beeper goes off if they go beyond a certain point or something squealing like a pig or something so that the neighbours all know those people are power hogs or something.

The Chair: Innovative thoughts that you're presenting there. Thank you very much for coming before the committee with your ideas today. Your input is very much appreciated. I know if you have further thoughts, we'd be happy to receive those as well.

Mrs Johns: Madam Chair, on a point of clarification: The gentleman suggested we should have a purpose clause that talks about energy efficiency. In schedule B, paragraph 6 of section 1 is the purpose clause, the broad objectives that talk about energy efficiency within this bill.

The Chair: Thank you.

1430

ONTARIO MINING ASSOCIATION

The Chair: We would next like to hear from representatives of the Ontario Mining Association. Good afternoon and welcome to the committee. We are pleased that you're able to join us this afternoon.

Mr Peter McBride: My name is Peter McBride. I'm with the Ontario Mining Association. Joining me today is Henry Smith, who is the plant superintendent of the Williams mine at Hemlo, near Marathon. Depending on whose scale you use, we can still call it the largest gold mine in the country.

It's nice to come to northwestern Ontario, especially to see Ms Johns, who has one of the biggest mines in southern Ontario.

Mrs Johns: Thank you very much.

Mr Conway: Working in the salt mines.

Interjections.

Mr McBride: I don't want to get into politics.

From where we're coming from, we certainly support the government's intent to create a marketplace for electricity. It's an important step for the future development of this province and the way we need to go.

Just by way of background before getting into specifics, the Ontario Mining Association was founded in 1920. It's one of the oldest industrial associations in this province. We currently have 47 members, representing about 98% of mineral production in Ontario. For economic importance — that's why it's always nice to come north from Toronto — the industry supports approximately 50 communities and on an annual basis provides \$6.6 billion in income, over 100,000 jobs directly and indirectly and, very important for the people at Queen's Park, provides at least \$1.5 billion in taxes annually.

The economics of commodity production, which gets us into electricity very quickly, is supply and demand, among other things. This industry is highly cyclical. Right now it's in a down cycle. Without singing the blues, from a year ago you're looking at nickel prices that are 30% lower, gold prices 14% lower, copper prices 32% lower and zinc prices 20% lower. What this means for electricity when it increasingly becomes a commodity too, I think it's going to go through those vicissitudes of going up and down, and depending whether you're a consumer or a producer of that commodity, your financial fortunes are going to change quite drastically from year to year.

Those low metal prices in Canada's resource-based economy, by the way, are certainly one of the contributors to our sliding dollar at the moment.

Electricity, for the importance of mining operations, is about 10% to 15% of operating costs. Why we feel this bill is very important is that it offers companies, mineral producers, the opportunity to manage a very high cost of their operation. Until this bill comes into place, it's take it or leave it from Ontario Hydro and we've been doing more taking than leaving.

The importance of electricity when we say 10% to 15% of costs: The industry spends about \$300 million a year on electricity collectively, which is approximately 3% of Ontario Hydro's total revenue. The competition — I hate to keep harping on how bad Ontario Hydro is, but if we were operating in Quebec or British Columbia, that electricity bill would be about \$100 million less, and if we were next door in Manitoba it would be about \$120 million less. That's how far the competitiveness of Ontario Hydro has slipped, particularly since 1990.

While the gentleman before was concerned about conservation, which we all respect, and I think energy efficiency, I can assure you that the economics of electricity costs are already in the mind of any mineral producer in this province. Particularly since the early 1980s, when low commodity prices forced this industry to wake up a great deal, energy efficiency has been foremost in the minds of miners and has been improving regularly. Going back to the mid-1990s, even when Ontario Hydro was on its demand-management phase, there was one study that showed that mining contributed 14% of all energy conservation in the province in 1995.

While we're concerned about electricity, I just wanted to mention one thing. I haven't heard anybody before talk about natural gas, other than as a source to produce electricity. I think the aspect that would allow large industrial customers to resell natural gas they buy is one of those things that's most welcome for the flexibility it provides and the ability to manage a large input cost.

While supportive of the bill, like many who've come before I have concerns about market power, stranded debt, resources for the Ontario Energy Board, licensing and the level playing field. Whatever percentage one wants to use, there is certainly going to have to be some mitigation of the generating capacity of the new Genco, the successor company.

Perhaps of specific concern, to use an example on the level playing field concept, is the tax situation where if a municipal utility transfers any of its assets to Genco or Servco, there's no tax liability. If those same assets are transferred to anybody else, there is a tax liability. I'd like to use that as an example of something that goes counter to the intent of a level playing field and open market.

I think we're all concerned about the debt. I think there are people at Ontario Hydro who wouldn't be happy until the stranded debt is larger than the actual debt. But if we're going to a marketplace, I think there's a valid argument to let the marketplace decide if there is a stranded debt, and if there is one, how much it will be, before any charge is slapped on consumers or transmitters of electricity.

The only thing we'd like to say is that if it does come to the point of a stranded debt, ensure that it is based on economic efficiency and that ratepayers, retail and wholesale, are protected. Again, transparency has to be the biggest thing.

Currently, I don't think we as payers of Ontario Hydro's debt understand how that money is calculated, collected or how it goes to repay the debt. If it comes to

the time that this debt is going to be reduced, everybody, whether they're living in an apartment or are a homeowner or a major industrial customer, has to know how that money is collected and is being used to reduce the debt. We're — I hate to use the pun — in the dark about it right now.

The burden, too, of stranded debt has to be minimized, if there is going to be one. We'd like to see some provisions strengthened that Genco and Servco have to stand up and be counted and to pay up to reduce the debt. If they are selling electricity to Americans or other markets and generating profits, we need to see some of that go to reducing the debt, not putting it on the backs of ratepayers.

I find myself in the reluctant situation of saying that maybe government activity should be expanded, which goes against a lot of what we say. The Ontario Energy Board under this legislation is being given a great deal of new responsibilities and duties, and it's really important for what's being expected of the OEB to help make this new marketplace work that it has the resources on hand. With all due respect, the former Treasurer of Ontario and member for Nickel Belt, that fine mining riding, is a good person to be in there, but I hope the resources are there to make sure he can do the job.

On the question of licensing to streamline the system, the legislation requires all participants in the market to get licences. Many industrial customers, particularly miners who might be generators of power, distributors of power, buyers or wholesalers — currently, the way the legislation is read, we understand it would require multiple licences. I think one licence could be used to cover market participants in that way.

1440

One other area that is important to mention is that through this consultation process — Ontario tends to be a province where things happen in an evolutionary sense. Whether it's the Macdonald committee or the white paper or, as Mr Conway alluded to, the nuclear affairs committee last year, there has been a lot of consultation and communication as we move towards a competitive market, and I salute the efforts that go in that direction.

To sum up, as big consumers of power, obviously we'd like a fair marketplace. There are concerns about Genco wielding too much market power and the debt we all need to deal with. I think the OEB is crucial to the future of making this marketplace work. We'd like consolidated licences.

I can assure members of this committee that, as an industry, we know a lot of homework has to be done and we all need to gain experience in this electricity market game and we're busy trying to do our best to help make this market work.

My colleague Mr Smith and I would be pleased to try to answer any questions from the committee.

The Chair: Thank you very much. We have five minutes for each caucus for questions. We'll begin with Mr Lessard from the NDP.

Mr Lessard: I'm pleased to hear that you have such confidence in the abilities of the former member for Nickel Belt, Mr Laughren, my former colleague. I have great expectations of him as well.

One of the things that caught my attention in your presentation is with respect to the stranded debt. We've heard a lot of different estimates of what the stranded debt will be. I know my friend Mr Baird will say we've got this army of experts to help us figure out what it's going to be or what it should be. However, we heard earlier — I don't know if you were here — from Thunder Bay Hydro. Their opinion is that this stranded debt is only going to be determined by some arbitrary means. Ultimately, it's going to be a political decision. It's going to be made by the Minister of Finance and that's what it's going to come down to. That's the reality. Of course my concern is whether the guess is wrong and what the motivation is to have that number either too high or too low. One of the other theories we've heard today is that perhaps one of the reasons to guess wrong is to make Ontario Hydro even bigger. I don't know if you have any opinion about that.

You say the marketplace should determine the amount of the stranded debt and you acknowledge that it's a simplistic suggestion. It sounds kind of frightening to me that the marketplace would decide that without knowing more of the details of how that might happen. Could you elaborate on that?

Mr McBride: Sure. I think there are two ways you can go. First of all, if a stranded debt is estimated, I can guarantee you, unless you're going to win Lotto 6/49, that the number is going to be wrong.

The people who are going to be the predominant determinators of where that stranded debt would start will be the bond raters in New York, which is where the financial consultants are trying to determine the value of Debtco — I call it Debtco — and Servco.

Mr Conway: I like it.

Mr McBride: A slip of the tongue.

I think there is a danger of having, as we all fear, people outside our control, the same as a municipal electric authority fearing loss of local control. I don't like the idea of maybe some people in New York helping determine a number, like what kind of credit rating a Genco would have, that then backs out to determine some artificial number for a stranded debt.

Although it may be simplistic, if you want to produce gold in the world market, the price will be set for that commodity and supply and demand will determine it. Instead of a predetermining that there is a stranded debt and it's going to be \$1 billion or \$15 billion or, as Mr Farlinger would say, \$30 billion, let the market determine it. If Ontario Hydro has done a good job of serving this province, as they maintain, then stranded debt in fact, if there is one, may be very low. Don't put a charge on consumers by picking a number through some financial process. If we're going to have faith in the marketplace, let's let the market give us a sense of what it is.

Mr Lessard: I'm not sure if you answered my question about how the market would determine that amount. One

of my fears is that the way that's determined is to have the assets of Ontario Hydro determined in the marketplace by being actually sold out there. That's one way to determine it, and I hope that's not what you're advocating.

Mr McBride: Certainly not, Wayne. We're advocating competition, not privatization. I'm not sure privatization is a solution at all. If Genco can make money, then what is the stranded debt if it can reduce it? If Servco can make money and pay the debt down, then what is stranded? I think that's how you have to let the market determine it.

Mr Lessard: The other issue we have to deal with is that we'd like consumers to be protected, we'd like to see consumers get the benefit of lower rates if they are out there. But if consumers are protected, that leaves taxpayers with this debt, whatever it is, that also might be out there. The choice is between who benefits and who pays, ultimately. I don't want to see residential consumers as the ones who end up footing the bill and large consumers figuring out some way to avoid it.

Mr McBride: That's fair. It's ratepayers. If there is a stranded debt, we would be supportive of the transmission charge. That seems to be the fairest. It should be on ratepayers, not taxpayers.

Mr Baird: I just echo my agreement that the market determining it would not be a bad idea. You did say in your comments that if Ontario Hydro has done such a great job, then of course they'll be able to do that. I think we all agree that there have been some problems at Ontario Hydro over the last five, 10, 20 or 30 years that led to that \$30-billion debt in the first place, so it's unlikely. We don't know. We have a financial team in place to advise the government with respect to how much debt the new Servco and Genco can hold. In the end, it's probably not unlike what you suggested. Whether it's the bond raters in New York or Dominion Bond Rating Service here, they will determine, is it viable? Can they get a BBB credit rating or an A credit rating to allow them to operate in a commercial environment?

You also said in your last exchange not to put a charge on consumers or customers. Today we've got that 44 cents out of our hydro dollar; we've got that charge in our bill. Nepean Hydro — that's on my bill every month. If it's a \$100 bill, I'm paying \$44 on debt. After Bill 35, I would likely continue to pay that. It would obviously decline over time, when you look at both the interest and payments on the principal. Obviously, getting that reduced would be a good thing and stopping it from taking over the rest of the pie —

Mr McBride: Is that your local utility that's provided that information?

Mr Baird: No, this was one we calculated. I have my local utility's here, which shows me that 90 cents goes to Ontario Hydro for generation and transmission and then today approximately 40% to 44% is going to pay for principal and interest. Basically, with Genco and Servco some of the debt will be assigned to them and then they'll look at how much stranded debt there is and there'd be a debt-for-equity swap with the province that the dividends

would seek to pay off. We got into this hole over 30 or 40 years, and I think it's been particularly bad over the last five or 10 years, and that has to be dealt with.

I wanted to raise one more point on your presentation. You mentioned, could all the money go towards paying off the stranded debt? Section 80 and a potential amendment to section 79 allow the regulatory powers to do just that. I guess what you're saying is that you want to wear a belt and suspenders to be doubly protected, which we'll take back to discussions with my colleague.

Mr Gilchrist: Thank you both. I appreciate your comments. I'm intrigued, Mr Smith, given that your mine is the largest gold mine in Canada. Correct me if I'm wrong, but since 1989 you've decreased your operating costs while increasing your output by about, what, 20%, 25%, to 6,500 tons a day?

Mr Henry Smith: On a tons basis, yes, but on an ounces basis, we've gone the other way.

1450

Mr Gilchrist: As you're getting more and more marginal.

Mr Smith: Yes.

Mr Gilchrist: To some extent, that's quite analogous to the situation we find here with Ontario Hydro. You and many other people have commented that they have a concern about Genco operating with the apparent market power it has today. Again, I would ask you a question, as miners. When someone finds another opportunity for a salt mine, are they deterred by Sifto's size? Is somebody deterred by William's size, Teck Corp's size? Or if you believe that the existing players in the marketplace are making a good return and you can compete at or below their cost and make a return that's acceptable to you, if there are no other legislative barriers to your entry, why would we be concerned about how Genco starts out? If they're not doing the job properly, the best possible job of delivering the lowest possible costs for consumers, why won't somebody else get into that market just as they would get into your market?

Mr Smith: We kind of expect that they will at some time in the future, that there will be other generators come in. I guess in the short term, when the power market opens, that's the only generator that's going to be available to us, as a large consumer, generally.

Mr Gilchrist: As the flip side on that coin, let me ask you both, as businessmen who obviously are dealing in pretty high dollar amounts, when's the best time, if in fact there are any benefits to bringing in other equity partners, to bring in new partners or actually sell off or swap certain of Genco's assets? On day one, or once you have determined their true value and their highest and best use? Do you do the fire sale right now or do we let them go into the marketplace? If they improve, great. No one else will come in and they will be returning a profit to the shareholders, namely, the taxpayers. If they don't, why would that still not be the most appropriate course because in a competitive environment we'll get a fair dollar if they have to swap or sell any of their assets in the future.

Mr Smith: Genco assets could be broken into competing groups within their own organization as opposed to having one province-wide unit.

Mr Gilchrist: It's an intriguing thought but I have to wonder what that buys us because you would then have to put in some kind of subsidy knowing that the coal plants are more expensive to operate and will yield a far smaller return than the hydroelectric, and the nuclear is somewhere in the middle. You will severely discount the returns on the one hand, instead of taking the same blending under one umbrella.

I fail to see how that helps us. In fact, under the same umbrella, is there not a greater incentive for Genco, as it faces new competition, to shed the most expensive, to shut down the most expensive plants? Whereas, if I were to sell you all of our coal plants today, you've now got a vested interest in continuing to crank out NO_x and SO_x and continuing to be in effect a negative in our economy.

The Chair: Can I interrupt? We're going to move on to —

Mr Gilchrist: I didn't get a yes or a no.

Mr McBride: I'll talk to you later. I wouldn't sell it now.

Mr Gilchrist: You wouldn't sell it now?

Mr McBride: No.

Mr Conway: I'd just like to pursue this because I see this as a central issue. We've got troubles; nobody's denying that. We're being told particularly by people like the Macdonald committee and most recently the Market Design Committee that the single biggest hope you've got for downward pressure on rates is stimulating competition on the generation side. That is the single biggest area for opportunity to force rates down. But those self-same panels are saying the single biggest impediment to that is too much market power in the hands of any one player; in this case, obviously it's Hydro.

It is not an easily resolved issue. The Macdonald advisory panel said we should unbundle under the umbrella, first, of the public utility into smaller competing units. I don't profess to know how you do that specifically but that was their recommendation, to try to do in a way what they've apparently done in Victoria in Australia. As I understand the Market Design Committee's analysis of the state of Victoria, then you've got at least the competition from within that family of generators.

But isn't our problem, though, the nuclear stuff? That's our real problem as we look over the next five to 10 years. Peter, you make the point about letting the market decide. I understand there's a real appeal, except this is essentially a nuclear company, the modern Ontario Hydro. Particularly its underperforming assets and its debt load attach to that, with all, by the way, the political problems that attach to it as well. So how, I ask you, is a market, whether it's in Toronto or in New York or in Frankfurt or in Tokyo, going to assess the true value of a large, troubled, high-debt, underperforming nuclear power utility?

Mr McBride: I'll stay away from that.

Mr Conway: I don't blame you for staying away from it.

Mr McBride: First of all, even if the market doesn't change, you're looking at \$10 billion up for grabs with this market in Ontario. That's Ontario Hydro's revenue.

Mr Conway: I'm talking about the valuations now.

Mr McBride: You've got to let those assets that generate electricity try to perform and sell their product in the market where they're going to have equal access to a transmission system.

Mr Conway: But surely, as we go into this market, we've got to have some idea of what Genco and Servco are worth. I guess I'm trying to get around my head, how is the market going to assess the value and the assets that attach to the nuclear power division?

In fairness to Bill Farlinger, when he made that speech in mid-June, where his idea of a stranded debt was substantially higher than others, I suspect what the chairman was saying out loud was, "By the way, we have done some costing about the downstream costs associated with the whole nuclear decommissioning thing and they're probably a lot higher than we want to suppose." I don't mean to speak for him but I've heard that from others. What do we do with that? How do we evaluate that sensibly?

Mr McBride: Unfortunately, I think we're going to go back to the bond raters in New York and it's going to be a political decision. It's going to be what credit rating do you want Genco and Servco to have.

Mr Conway: But surely they're going to say: "Yes, this is a dog's breakfast. Let the politicians decide. That's just so fraught with trouble and environmental hazards and all kinds of whatever."

Look at what we got from Ontario Hydro last year. Have you read this? If I was an ordinary citizen and I read the 1997 Ontario Hydro financial report, I'd be terrified to think of what somebody would do in New York. I'd understand what they might do in New York, but my expectation is when they look at that nuclear power division of Ontario Hydro, they're going to say: "That's one for the politicians. We're not going to take that."

Mr McBride: I think, Mr Conway, the flip side is that while we can speak negatively of that, there are others like British Energy and PECO. Ontario Hydro currently is not talking to anybody about long-term leases or deals like that, but there are companies out there that are willing to, through signing long-term leases, put a value on some of Genco's assets. Maybe it's a two birds with one stone kind of thing. It helps you evaluate those assets. It also helps get other competition into the marketplace without Genco on a long-term basis selling off its assets at fire sale prices or otherwise.

There are some people out there who may look at the Bruce plant and say —

Mr Conway: I accept that.

Mr McBride: There are ways around that.

The Chair: On that note, thank you, gentlemen, for coming before the committee this afternoon. We

appreciate your advice and we'll consider your suggestions carefully.

Mr McBride: Thank you very much. It's a pleasure. Good luck with your deliberations. A very important job.

The Chair: Calling the representatives from Aird and Berlis, please.

Mrs Johns: Chair, can I just give another point of clarification? In two presentations we've had today they've talked about having to get separate licences and how that will be quite a barrier. Subsection 59(1) gives the Ontario Energy Board the ability to grant one or more licences to an individual, so I think we have handled that in the legislation. If you could read that and if it's still a problem to you, we'd like to hear from you. But 59(1), we heard on that issue twice today. Thank you for raising it.

1500

AIRD AND BERLIS

The Chair: Good afternoon. Welcome. Please introduce yourselves for the Hansard record.

Mr Bob Doumani: My name is Bob Doumani. I'm a partner in Aird and Berlis. I'm a member of the energy group and the municipal group. I've been practising municipal law for about 24 years, but in the last four years I've been engaged in the expansion of municipal electric utilities into the Ontario Hydro retail division service area. I was lead counsel in a case about which you may hear something next week, Lincoln Hydro against the Power Workers' Union. I've distributed a submission to you, which the clerk was kind enough to hand out. I propose not to read it, but just walk you through it.

On page 1 I've listed those clients for whom we currently act, and all of them are engaged at one stage or another in an attempt to expand the area of local retail service and bring it under the umbrella of the local municipal utility. They do, in my view, represent a reasonable cross-section of the electrical restructuring activity at the municipal level prior to the introduction of Bill 35.

I've divided my submission into three areas: one, the treatment of boundary expansions under the Power Corporation Amendment Act of 1994, which I'll call Bill 185 for ease of reference; two, attempts at utility amalgamations; and three, some comment, if we have time, about ancillary services, which the new municipal electric company permitted by section 130 of Bill 35 can undertake. I will concentrate on the first part, boundary expansions, because there are, in my view, significant transition problems in this bill about which I want to talk to you.

Bill 185, the amendment to the Power Corporation Act, was enacted after a study, a review, after extensive consultation with stakeholders, and negotiations, and, as I understand it, all-party approval. It permitted municipal corporations to enact bylaws expanding the area in which their utility provided retail service into the area in which Ontario Hydro retail provided service, thereby allowing the municipality to take over control and management of the distribution of assets. The purpose of that, as I

apprehend it, was to provide a degree of local control and accountability in the delivery of electricity at retail.

Bill 35 produces an arbitrary cut-off date of June 9. If the municipality passed a bylaw permitting expansion before June 9, that bylaw is void unless they've also entered into a transfer agreement, that is to say an agreement providing for the transfer of assets, the control and management of assets from Ontario Hydro to the utility. If, on the other hand, the municipality passed an expansion bylaw on or after June 9, its bylaw is void.

The commissions which we represent fall into three categories. Category 1 are those who passed bylaws before June 9 but have not yet entered into transfer agreements. Category 2 are those commissions who in good faith were planning, studying and working on an expansion but didn't pass the bylaw before the arbitrary date. The third group are those who were creating a municipal electric utility but had not got distribution assets into it yet.

Let me deal with the first group and tell you what happened. A number of municipalities, including Lincoln Hydro, were off the mark fairly quickly, as early as late December 1994 or early 1995, to pass expansion bylaws. All those bylaws were appealed by the Power Workers' Union and some of its members. They were being appealed by the Power Workers' Union and a list of its members, and that appeal was taken to the Ontario Municipal Board.

In order, I thought, to expedite matters, I brought a motion to have the appeals dismissed as having nothing to do with the issues raised by Bill 185, and the board agreed. But in agreeing, the board treated the Lincoln case as a test case and stacked up all the other appeals behind it. So Lincoln and some 11 or 12 municipalities were then locked in combat, as it were, with the Power Workers' Union.

The union appealed to the Divisional Court, where the board was unanimously upheld. The union appealed to the Court of Appeal, where the board was unanimously upheld. The unions sought leave to the Supreme Court.

Interjection.

Mr Doumani: Yes, you've got it. You've done that, have you?

On April 30, leave was refused. So there Lincoln stood, ready to go forward.

Subsequent to that, through the offices of the Municipal Electric Association, an understanding was worked out with the Power Workers' Union whereby it agreed to withdraw its appeals from the other bylaws and try to get its members to withdraw. It has withdrawn those other appeals, but its members haven't. The significance of that is that no expansion bylaw comes into force until the board's process is over. So we're off to the board on August 24 to see if the board can do something about that for us. But if a member of the Power Workers' Union wants to continue to fight, we could be in this same dance for quite some time.

Against that we find Bill 35. Bill 35 says if you don't have a transfer agreement before the Power Corporation

Act, as amended, is repealed, even though you passed your bylaw before June 9 and even though you were stuck fighting with the Power Workers at the Ontario Municipal Board, your bylaw is void; it's gone. So four years of work, for many of those municipalities, is tossed out the window. I don't think that's right and I don't think it's fair.

The problems which are being caused by that provision are these — I'm on page 4 of the submission now. There may not be sufficient time to negotiate a transfer agreement if I have to get into this dance on 11 or 12 other appeals at the board and through the courts. Secondly, the bill deprived municipalities of a significant right that they had under the Power Corporation Act, as amended. Bill 185 said, "You, municipality, could expand with or without an agreement with Ontario Hydro." Bill 35 now puts a gun to the municipalities' head and says, "You've got to have an agreement. If you don't have an agreement by the cut-off date," which is the proclamation of Bill 35, "your bylaw is void." That, as you could well imagine, gives Ontario Hydro, one of whose solicitors is here, with whom I've been dealing, a significant bargaining advantage. I'll tell her that right in front of this committee.

Mr Conway: Point her out.

Mr Doumani: No, I won't. I respect her too much. But she's over there.

It permits them to extract commercially unrealistic terms. Let me give you a couple of examples. We're talking about an asset transfer of control and management here in the order of magnitude of \$6 million to \$8 million — not small potatoes. You would think as a matter of commercial realism you would obtain what the lawyers call a representation and warranty, a promise or an undertaking that the assets that you're getting might actually be in good working order. Hydro says no. And you might expect to say to Hydro, "If you've got any environmental problems lurking there under one of your transformer stations, maybe, and if they arose before you transfer control of the assets, that's your problem, isn't it?" Hydro says no. That's the type of situation this bill has put municipalities in, and I think just simply stating it shows it's not fair.

Thirdly, since, as I understand it from the bill, the Ontario Hydro retail division will find its way into Servco, there's not a lot of interest, I would suggest, in Ontario Hydro to transfer portions of Servco's assets and customers, and the control and management of them, to a municipal entity. I'm not blaming them — it's common sense — but you can see that they are not a very willing participant in the process. So why not insist on commercially unrealistic terms and hope the clock runs out and the bylaw is voided?

1510

I attach it perhaps for a little levity, but in that regard Hydro is dragging its feet, to be blunt. There is a letter, as the last item in my submission, in one of the expansion municipalities that I invite you to look at. We've been discussing what the transfer date is going to be. What date does control in management occur? Curiously, and I'll

come back to it, it has to be after January 1, 1999, even though we're sitting here in August 1998. As I say, I'll come back to that, but the excuses are becoming quite interesting, including the one I have attached about vacations. Everybody is too busy going on vacation to get to work on transferring, except, of course, the solicitor with whom I'm dealing.

There you are. If you're on page 5, here is what we're recommending on behalf of our municipalities and municipal electric clients. We're facing an uncertain negotiating deadline, because you know in this bill you can proclaim various sections at various times, but the clock is running. We've got one party to the negotiations who has an unfair negotiating advantage because the bill has put a gun to our heads, and we have a possibility of continuing expansion processes being precluded. What we're recommending is this: Look, extend the time limit for entering into the transfer agreement until the later of — which is a good lawyer's term — either we get through all these appeals or two years from proclamation. Why did I pick two years from proclamation? That's the time limit in which we have to set up the municipal corporation under sections 130 and 131.

Secondly, and I'll deal with this now, conclusively deem — another lawyer's term, but that means "for sure" — all the provisions of Bill 185 dealing with transfers apply. The bill currently says all the provisions of Bill 185 continue for the completion of a transfer. I hesitate to say this in a public committee, but I will: A little degree of paranoia in a lawyer is not a bad thing. When I have Hydro stalling me past January 1, 1999, as to the effective transfer of the assets, I wonder if there's a hole in the provision. If there is a hole in the provision, I don't want to worry about it; I want to block it.

The problem is this: What if I sign the transfer agreement today, with all the terms I don't like, but the transfer doesn't occur until January 5, 1999? Is that completion or does completion simply mean all the documents necessary to give effect to the transfer? I don't know the answer to that. I know that on the ones I'm working on, it's going to be a long time to get the actual documents of transfer, the little bits of paper that say you have title to this and title to that. I could have a transfer today, but I don't get the paperwork done for three or four months. Is that what completion means? We don't need that problem on a \$4-million to \$8-million deal, so clean that up. That's all we're asking.

Finally, because of the negotiating leverage that this bill has given, we're recommending that a form of interest arbitration be available. That's not unique. Bill 185 provided for arbitration over the transfer price in respect of the control and management of the assets. It's not a big leap to provide for a form of arbitration over the commercial terms. I don't care what the price is if the commercial terms are not realistic.

That's our first group of municipalities.

Our second group — now I'm on page 6 — was in process when Bill 35 came along but had not passed an expansion bylaw prior to June 9. I've given on pages 6

and 7 the example of the town of Huntsville. It's typical of what Bill 185 was trying to accomplish. The District Municipality of Muskoka Act restricted the Huntsville Hydro Electric Commission to the core of Huntsville. Then, as Huntsville grew out, under the district act you either had to take in the whole of Huntsville or not; you couldn't go partial. Bill 185 fixed that.

Once Bill 185 was enacted, Bracebridge, Huntsville and Gravenhurst got busy doing studies to see if it made sense. Gravenhurst and Bracebridge were first off the mark to pass their bylaws, and guess what? The Power Workers' Union and several of its members appealed them. So Huntsville said: "Lincoln Hydro is a test case. Let's see what happens." On April 30, 1998, we won. Huntsville then starts the process to get its bylaw in place, and boom, along comes Bill 35 and cuts them off at the pass, as it were. That's contrary to what I thought the Macdonald commission report and the white paper said in terms of encouraging utility expansions. Huntsville had no idea that June 9 was going to be picked. It doesn't seem right and it doesn't seem fair that Gravenhurst and Bracebridge within the same district, for example, can enjoy the benefits of an expanded utility, including local accountability, and Huntsville can't. In effect, the Power Workers' Union, having been beaten unanimously at every judicial level in this province, now wins in Huntsville because it has delayed it.

That is the issue there. The recommendation is very simple. We have said that you should grandparent municipalities in that situation. Either just do it or, if you have some concerns about process, you could put a provision in that says a municipality that has completed a study, enacted a resolution or expressed some other clear intention of municipal intent to expand is grandparented, and if there is an issue it can go to the OEB for determination. That's the second group.

The third group is on page 8. Those are municipalities — and I've put two down, Oro-Medonte and Moore; I think you are going to be hearing from Moore on August 20 in more detail — that had just established municipal electric utilities and were trying to negotiate agreements for the transfer of control and management with Ontario Hydro when Bill 35 was introduced. As I read the provisions which I've set out on page 8 of the submission, particularly the ones in sections 130 to 132, if you have a municipal public utility or hydroelectric commission but it's not distributing because it doesn't have assets to distribute, you're not in the game. You can't then access the creation of the municipal corporation. Without the assets, these municipalities are dead. We are having inordinate difficulty in Moore with Ontario Hydro striking a deal over the assets. Again, it's a timing thing. Why give up part of your retail division if you know that if you wait long enough this bill will cut off those who were bona fide in the process of trying to do it before the bill was ever introduced?

Again, very simply, we have two recommendations: First, give them two years — and I told you why the two years were picked — to begin distributing electricity or

obtain the assets, and that's again coincidental with the two-year requirement on the municipal corporation; and give them access to the Bill 185 process in terms of the transfer of control and management and any employees who that bill may permit to be taken over as well.

1520

Finally, related to that, it was the recommendation of the Macdonald commission report that you try to create shoulder-to-shoulder municipal electric utilities, try to amalgamate them. I don't want to sit here and be all doom and gloom. Bill 35 has a nice provision. The ability of more than one municipality to own shares in that municipal corporation permitted under section 130 or 131 of the bill is an outstanding way to produce the type of amalgamations that the Macdonald commission recommended. But the problem is that if you're not contiguous to each other, if Ontario Hydro is between you so that you are — to use a term that's probably been overused here — stranded from your brother and sister municipalities, what's the point?

There are a couple of municipalities, Moore township being one, who were in the process of trying to get themselves into a position to amalgamate and actually have a private bill before this Legislature, Bill Pr8, to create the West Lambton Electric Commission, consisting of Sarnia, Petrolia, Point Edward and, it was hoped, Moore. But if Moore doesn't have the distribution assets, Moore is not in the game, yet Moore was trying everything it could and was working hard and had spent significant dollars for a municipality that size to get the distribution assets, and it will be frustrated by this bill.

The rest of my submissions are on ancillary activities; you can read them for yourselves. I hope I've a little bit of time for questions.

The Chair: Yes, not a lot of time but a little bit of time, I think about two minutes for each caucus. We begin with the government caucus.

Mr Lessard: Madam Chair, I'm prepared to give up my time, but I'd like to give the parliamentary assistant an opportunity to give some explanation of why June 9 was the date that was picked. If that's not available, we could —

Mrs Johns: It was the date of the first reading of Bill 35.

Mr Lessard: There must be more reason than that.

Mrs Johns: That's exactly what it is, the date of the first reading of Bill 35.

The Chair: Let's use our time constructively, then. Go ahead, Helen.

Mrs Johns: I'm just a dumb little bookkeeper from Huron county and that was a pretty slick presentation for me.

Mr Doumani: And if I believe that —

Mrs Johns: I just want to ask you a few questions about this. It's my understanding that Bill 185 allows municipal electric utilities to take the assets from Ontario Hydro at book value. Is that correct?

Mr Doumani: No. Both "take" and "book value" are wrong. Obtaining control and management —

Mrs Johns: Purchase.

Mr Doumani: No, not purchase. Obtaining control and management or acquiring control and management for the residual debt.

Mrs Johns: For the residual debt? Oh, that's even worse.

Mr Doumani: From your perspective.

Mrs Johns: From that standpoint, there's an asset at Ontario Hydro that's worth 50 billion bucks and the residual value on that asset is five billion bucks and you think the MEUs should be able to take it for that five billion bucks as opposed to the 50 billion bucks which is the cost the taxpayers of Ontario paid for that asset?

Mr Doumani: Yes, including the ratepayers within the area to be serviced by the MEU. I hold to the view that those assets are held in trust for those ratepayers.

Mrs Johns: So what you're saying to me is that if a private individual company came in — we're trying to level the playing field in Bill 35 — what would happen is that they would pay the 50 billion bucks, the MEU would pay the five billion bucks and you think that we, as the people protecting the taxpayers of Ontario, should let it be sold at this fire sale for five billion bucks?

Mr Doumani: It's not a fire sale. It's not a —

Mrs Johns: The residual value.

Mr Doumani: Let me finish my answer. It's not a fire sale. It's not a private corporation, it's a municipal corporation, and since your government has finished downloading a pile of costs on municipalities and reducing grants, it would be kind of nice to have an Ontario Business Corporations Act corporation which can be both in the distribution business and, through a subsidiary, in other businesses. It might a source of revenue. We are taking in a debt which the Legislature in 1994, with all-party approval, thought was a good idea, and I don't see any circumstances or any rationale why that's not a good idea right now.

Mrs Johns: Given that the government believes there should be a level playing field and that competition is the key to bringing this level playing field, how would you say that's a level playing field when a municipal electric utility can get it for five billion bucks and the private sector guy is going to pay 50 billion bucks?

Mr Doumani: How do you say it's a level playing field to allow Ontario Hydro retail division to continue to exist to service a very large number of ratepayers with no local accountability, no local input? I don't see that as a level playing field either, and I don't see the private sector bellying up to the bar to create a distribution system.

Mrs Johns: I would say that we're seeing the presentation from Encore coming through loud and clear.

Mr Conway: I'm going to follow up. The parliamentary secretary does a very good job, but I think we have a problem here, Helen, quite frankly, because it is a distribution system. We all want this to happen. I think we've had this discussion. If this committee has heard one thing, it is that surely there are gains, in some ways probably the easiest of the restructuring, that should occur at the distribution end. I think we would really want to

see, more than theoretically — but this west Lambton business certainly sounds like something we were anticipating with Bill 185. You weren't there. I was. That was certainly my view.

I know the rationalization that should occur in Renfrew county would have some similar ingredients. I would want fewer players rationalized across a sensible region. You're right about a level playing field, but I would expect here that you're going to have two competing public entities fighting for the distribution asset. If I'm a ratepayer, if I'm a taxpayer in west Lambton or in Renfrew, I pay my rates, I pay provincial taxes, but I also pay for my municipal tax. I would assume that the real competition is going to be between two parts of the public sector, and I want rationalization. I don't expect that there are going to be any private players moving in, but maybe we'll talk about that.

I guess what I'm saying is that if we don't fix this problem, if this doesn't get fixed, we are not going to get what we want except with this proviso. When I think back to the provision yesterday, you know, we will get an Ontario Hydro retail. That's what we will get. We will inadvertently, from the point of view of the committee, allow a situation to occur where there is real rationalization, but in the end it's going to be Ontario Hydro retail, because you can't make the other business happen. Would I be —

Mr Doumani: Yes, that's the problem. Especially in the more rural areas or areas where there is a little bit of an urban core and a rural area around it, the market control will be Ontario Hydro retail or Servco, when it's rolled into Servco. I don't know what's right about that.

Mr Conway: I was maybe being a little bit bold yesterday, but in my area, and that's very similar to this situation, they are so ticked off at the service problems of Ontario Hydro that they like Bill 35. One of the things they want in Bill 35 is hopefully a kind of west Lambton operation that they have got some reasonable control over. If this thing turns out —

Interjections.

The Chair: We have a guest. Questions are to be directed to the Chair or to the guest. We're going to wrap up, though.

Mr Doumani: Mr Conway, I'll take it as a question and address that. It's one thing to have to go to some big service centre or downtown Toronto; it's another to walk into the plaza where your local municipal electric utility is when you have a problem, and that's what Bill 185 was about.

Mr Conway: My concern — just a final point — is that you're telling us in this that there is, buried in this bill, a mechanism that, as far as you read the situation, effectively frustrates and perhaps more the rationalization of distribution units at the local or regional level.

Mr Doumani: And now intentionally so, it seems.

The Chair: Colleagues, we must wrap up. On behalf of all the members of the committee, I thank you for coming before us today with your brief and your view on this piece of legislation. It's much appreciated and I know we'll consider it carefully.

Colleagues, we have a plane to catch. It leaves at 4:40. The taxis will be waiting for us at the front door. We begin tomorrow morning at 9:30 in Sudbury. We are adjourned for today.

The committee adjourned at 1530.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mr Michael Gravelle (Port Arthur L)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Ms Anne Marzalik, research officer, Legislative Research Service

CONTENTS

Wednesday 12 August 1998

| | |
|---|-------------|
| Energy Competition Act, 1998, Bill 35, Mr Wilson / | |
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, | |
| projet de loi 35, M. Wilson | R-61 |
| CanEnerco and Ontario Petroleum Institute..... | R-61 |
| Mr Philip Walsh | |
| Northland Power | R-66 |
| Mr Fred Brown | |
| Mr Mark Rodger | |
| Thunder Bay Chamber of Commerce..... | R-70 |
| Mr Harold Wilson | |
| Ms Rebecca Johnson | |
| Valerie Falls Limited Partnership..... | R-75 |
| Mr David Boileau | |
| Mr Bud Carruthers | |
| Northwest Energy Association | R-79 |
| Mr Larry Hebert | |
| Mr Doug McCaig | |
| Thunder Bay Hydro..... | R-84 |
| Mr Paul Kennedy | |
| Mr Larry Hebert | |
| Environment North | R-88 |
| Mr John Boulter | |
| Ontario Mining Association..... | R-92 |
| Mr Peter McBride | |
| Mr Henry Smith | |
| Aird and Berlis | R-96 |
| Mr Bob Doumani | |

CAJOT
AL 13
1998



R-4

R-4

ISSN 1180-4378

Legislative Assembly of Ontario

Second Intersession, 36th Parliament

Assemblée législative de l'Ontario

Deuxième intersession, 36^e législature

Official Report of Debates (Hansard)

Thursday 13 August 1998

Journal des débats (Hansard)

Jeudi 13 août 1998

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Energy Competition Act, 1998

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



**Chair: Brenda Elliott
Clerk: Donna Bryce**

**Présidente : Brenda Elliott
Greffière : Donna Bryce**

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service

3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2

Telephone 416-325-7400; fax 416-325-7430

Published by the Legislative Assembly of Ontario



Service du Journal des débats

3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2

Téléphone, 416-325-7400 ; télécopieur, 416-325-7430

Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 13 August 1998

Jeudi 13 août 1998

*The committee met at 0930 in the Four Points
Sheraton Hotel, Sudbury.*

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

SUDBURY AND DISTRICT
CHAMBER OF COMMERCE

The Vice-Chair (Mr Peter L. Preston): Good morning, ladies and gentlemen. We have a tight agenda today. I call on Gerald Foley, Sudbury and District Chamber of Commerce. Mr Foley, you have one half-hour in which to make your presentation. I hope that you would leave some time during that half-hour for questions at the end. For the purposes of Hansard, would you identify yourselves prior to your presentation.

Mr Gerald Foley: My name is Gerald Foley. I am president of the Sudbury and District Chamber of Commerce. With me today is Robert Skelly of the SRDC. I'd like to thank you for the opportunity to make a presentation today. It wouldn't harm my feelings at all if we could do this in 10 minutes instead of 30 minutes and start off ahead of schedule as opposed to running late, so we'll endeavour to do that for you.

I'm here today representing the roughly 1,000 members of the Sudbury and District Chamber of Commerce. The Sudbury and District Chamber of Commerce has the honour of being one of the largest and most vibrant chambers in the north. We represent a group that ranges from multinationals that are here today and on the agenda to individual people trying to make a living selling something or doing some form of service. Over 70% of our members have fewer than 10 employees, and it's particularly that group that we are going to try and speak on behalf of.

The one thing we figured out when we got into this is that the titans are going to take care of themselves quite well. Ontario Hydro and the large buyers of electricity are going to ensure that they have invested a great amount of effort and energy in knowing what the heck this is all about, how it's going to impact them and how to take care of themselves. The small business person, by a very weird reality of life, has neither the time, energy nor expertise to truly delve into these issues and take care of them.

Quite frankly, when I was handed this issue to deal with, in spite of having some great resources available to me, people who are going to be making presentations here today on their own behalf, I came to realize very quickly that the breadth and scope of this change is beyond what I would call us mere mortals, who are not immersed in the energy issue. Trying to figure out what wheeling rate was and finding out what stranded debt was, and a whole host of new terms, was quite frankly an interesting challenge.

In spite of having already told you that we don't really have a lot of expertise in this area, there are some things we would like you to think about and deal with as you go through this process. One is that we recognize that this is possibly one of the largest fundamental restructuring changes undertaken by the government in its current mandate. We fully endorse the privatization of Ontario Hydro, so at a basic level we very much endorse this bill.

Given the reality that we as small business people don't have the time, energy or expertise to make sure that our interests are taken care of, and given that small business is the economic driver of this economy and the backbone of this province, we think it's very important that the message that comes out of here is that those people who do have the time, who are vested with the knowledge, the ability and the accountability to make decisions, do so in a manner that clearly keeps the interests of small businesses and small manufacturers in the forefront. As I said earlier, the titans of the game are going to do a very good job of taking care of themselves. I don't think Ontario Hydro is prepared to come out of this a loser. I don't think GM or Ford or Falconbridge or Inco, any large players, are going to sit by passively, so there's a reality here that I think you have to take back.

What a small business person needs is dependable service at a reduced cost. We all know that Ontario Hydro rates — I heard the presentation or the report from the mining association yesterday — are uncompetitive. If they're uncompetitive for a large supplier, you can be very

sure that they are uncompetitive for a small bakery or for a small place grinding stone, making monuments. We want to make sure that the group drafting the bills and developing the regulations never loses sight of taking care of the small business person. I wonder how many pounds of paper — I know with my little brief there were 25 copies asked for, and if every person who is making a brief brings 25 copies, we're going to have some healthy paper industries.

In spite of all that and in spite of all of the economic analyses and in spite of all of the very learned people who will no doubt give you lots of opinions on what to do, we know there are going to be points in time when the person trying to craft the regulation or figure out how to say what they want to say in the act is going to run into a grey area where there is no clearly defined answer, and at that point — if we had it, we'd blazon it on the wall where they're working — we want them to ask themselves, "Now that I'm at a crossroads or at a grey area, which approach will best stimulate private business, will generate better service and reduce the cost of this product?" If they figure that out and they follow that lead, then they won't go very far wrong in the development of this act. That's the philosophy we want you to adopt.

We'll try to talk a little bit about some specific issues out of the myriad that I'm sure have to be dealt with to give you our opinions. You may in the end ask me questions about something which I have been told is good for me and I don't really understand, and if the person who told me is in the crowd, I'll ask them to answer the question for you.

One thing is timing. We believe very much that everything should be done to move this bill through by January 1, 2000. That's not saying we don't understand the magnitude of the issue, but when you put something this large into flux, ambiguity sets in. People start to defer investments, people start to wonder what it's going to look like when it's over, and they start to hesitate. We think the sooner the better. Maybe not everybody is going to be ready on January 1, 2000, but it's a fact of life as human beings that if you made it January 1, 2002, the same people probably wouldn't be ready by then either.

Stranded debt: I'll tell you that as an individual when I heard about this I shook my head. I'm sorry, I don't have a lot of time for people who have \$16 billion in assets and I'm told they're likely to have \$45 billion in debt when this is all done. Whether that's a magnitude larger than what it really is going to be, who knows? But I do know one thing: Their ability to incur more debt should stop yesterday. They haven't proven to have a great track record, because if I was giving someone \$1 to invest on my behalf and they came back and said, "You owe me \$2 more," I wouldn't keep them as an investment banker very long. I think the privatization of Ontario Hydro is about — whatever that number is — \$30 billion too late. I think you know that I have an opinion on that issue.

Fairness: We're worried that in a battle of titans, where lots of expertise is thrown at it, it's the small producer, the small person, the ratepayer, the taxpayer, who ends up

getting it in the end here, so please, when you're structuring this thing, let's make sure that it's perceived as fair for all participants.

There's one thing that we did have a discussion about. In this changeover from what we've grown up with, everyone in this room and Ontario has grown up with, to a new world there are going to be some areas in this province that do very well by the change, particularly areas that have gencos — I think that is the term that's used — and we feel that it is not inappropriate to say that those areas that end up with a very definable benefit should either be required to share that benefit with all of us who have helped set it up or incur a proportionally greater piece of the liability.

In other words, if we want this thing to come out fair, there can't be very clearly perceived winners. That doesn't mean everybody ends up being a loser. I'm asking you to accept that paradox. But there are some large cogen stations in this that derive a great deal of economic benefit for that area and there are areas in this province that have no perceived benefits out of this. Let's make sure that someone doesn't come up with a wonderful straight-line analysis and we all get treated "fairly" by paying the same thing and yet some people get a benefit.

0940

I'm on page 4, for those who are trying to follow this presentation.

Level playing field: I think here what we're really talking about is a level playing field with groups such as the natural gas industry. I probably should read this because this isn't one of my strong points.

We have to ensure that there's an effective process in place to encourage the municipal electrical utilities and Ontario Hydro retail to merge local assets and ensure local control of distribution systems. We would endorse retaining the processes set forth in Bill 185. I'm told that they are quite capable of doing what needs to be done. However, there are probably ways to enhance it, and those should be looked at, to ensure that it in fact would facilitate the transition to municipal electrical utilities even faster. Having never seen Bill 185, please ask me for no details on it, but I'm told by the people who would be impacted by it that they see it as a fair and appropriate methodology.

Explicit business lines: This is something, depending on whether you want to be in the business or are in the business and want to stay in the business — we had people from all spectrums trying to give us advice on this. After they gave us their advice they sort of did like people do: They said, "There's our opinion; you figure out where you should sit as the chamber of commerce," and we did. We come back to the question I suggested to you earlier: Does it drive private business?

We think there's a very realistic possibility, and I'm told there are horror stories that in fact it is occurring, where the regulated utility can use its strength, the fact that it is regulated and has a given rate it can charge, to unfairly compete with the small business person trying to do electrical services business. That should not be allowed

and it's got to very transparently not be allowed. There should be no sharing of resources. They shouldn't be able to share the same buildings so that the regulated business is absorbing the costs so that now their overhead costs, trying to bid on a power line contract, are a lot less than the guy who has to own his own building, run his own trucks, can't share a foreman, those sorts of things.

We think it's important to recognize that the act and the regulations have to be explicit as opposed to implicit. There is, I understand, a sense that if the small business person is able to indicate where they're being harmed, it should be looked at. Let's remember the story of the titans. Someone who can put \$60 million on their first draft to this committee has got a whole lot more clout than a person who says to a volunteer like myself: "We know we should be commenting on this. How much time can you dedicate to it?" That's the reality. Someone who has five employees is not going to be able to take on a monopoly, albeit a smaller, regulated group than currently exists. So try to ensure that the regulations are very explicit that they can't use their resources to compete where private business can compete.

We endorse the concept of local ownership for the wire distribution companies. However, that's tempered by the belief that the entities must end up being of a decent size, scope and breadth to be credible players in the game. We don't envision every little community—I think there are something like 300 MEUs now. Some people have suggested to me the right number is 10 to 15. To be honest, I couldn't tell you whether it should be 200, 150 or 15. What we're saying is that there should be some sense that the people who are taking care of me are within a reasonable local region to where I am and that it's not a 1-800 phone number, unless the call centre happens to be here in Sudbury. We would gladly take on that business.

Sale of assets: I have no doubt that when it's all said and done this will end up being very contentious. We believe the rules need to ensure that Ontario Hydro divests of its assets in a reasonable, fair, costly manner. I'm sure everyone will agree with that and no one will know how to define that. I'm not going to give you the answers because I don't know.

However, we do know that a simple way to frustrate this process is for Ontario Hydro to say, "We need to make a whole bunch of money so that we don't look like total idiots with a \$30-billion leftover debt, so we'll crank the price up, and since people want to get into this business, they'll pay \$5,000 for something that the market rate should be \$1,500 for." I don't think you can leave that to the market per se to decide, because one of the players in that market, the seller, has huge clout and the other people will be gambling that they can make this go. I think the rules have to set that out very clearly.

It's like the fear that we stated in here. One way to frustrate the whole process is for Ontario Hydro to set an artificially high rate that no one can buy into and then say, "We tried to divest but obviously nobody wants to be in this business." You have to ensure that happens. As a person who then ultimately is going to have to pay for

whatever that sale price is somewhere in the system, I don't want it to be something that I've already paid for being bought and paid for again.

I'd like to thank you for allowing us these few moments to give you that input. I think it stayed at a very high level. I'm sure there are other people who are going to wade into the details, and quite frankly I pity you for that, but that's why you guys get the big bucks, I guess. But our fear is that we've got to make sure, and the only message we're really here to bring you today, is that the people making the decisions in the grey area ask themselves that question: Will this decision, this regulation, this process stimulate private business, ensure dependable service and reduce the cost of the product? That's what small businesses are interested in.

You wouldn't have had time if every member of our chamber had decided to come and give you that message. You wouldn't have had time to hear 800 people do that. So I'm here on behalf of 800, and no doubt 180,000 small business people, or however many there are in the province, all have the same concern. I don't know what you're doing to me and I'm not sure how it's all going to work out, but I need to make sure that business is involved, service is dependable and the costs are reduced. How you do that in this scope of change, we wish you the best of luck. As I said, if you could make a poster and stick that on every piece of paper, then you're going in the right direction.

The Vice-Chair: Thank you, sir. We have three minutes per caucus. We will be doing it on a rotational basis. We'll start with the Liberals.

Mr Gerry Phillips (Scarborough-Agincourt): Thank you, Mr Foley, and I appreciate the chamber's presentation. My background is business. I used to have three businesses and 300 employees or so. Let me just say that I also agree with the comment you made that the titans will look after themselves. There's no doubt that there's going to be hundreds of millions of dollars made on this bill and the big will handle themselves. Our caucus's concern is small business and the consumer, the average home consumer.

The problem we run into is that, frankly, we're going to have to deal with this bill before we're able to get answers to many of the questions you raised. The Minister of Energy said the other day that they won't have the stranded debt for us before we approve the bill, and he said it's really not that important anyway that we know that. For us it's fundamental, because if the stranded debt is loaded in a certain way it will benefit big business and penalize small business. Hydro has said that they are going to keep all of their generating assets and sell heavily into the US to pick up the 40% share of the Ontario market that they're going to lose. If that doesn't happen, guess who picks up that cost. It's small business and the consumer.

My message to you really is that we're going to have to sign this bill, the Legislature will deal with it, before we have some of those fundamental questions answered. Do you think we should be holding off on final approval of the

bill until we get the answers to the questions that you've raised in your document here?

0950

Mr Foley: Quite frankly, no, I don't think you should, and for a couple of reasons. But I'd like to make a comment on a comment you made and the minister has made. Although we didn't write it into our brief, it would be fair to say that we believe fundamentally that on the cogeneration side, if you're going to have an active marketplace, Ontario Hydro should not end up with any more than, say, 30% of the cogeneration business. You have to stimulate business, it has to be a competitive market, and if there's only one supplier of reason in the area, that's not competitive business.

Why would I say not to hold off on the bill? Because quite frankly, whether it's \$20 billion or \$40 billion, it's a hell of a lot of money. We all know that, and the detail of that is irrelevant. But as a small business person, you know as well as I do that if you hesitate, if you delay, there will always be a reason to do that. This is an issue where ambiguity is going to hurt more than help. We know the direction we have to go in and that has to be endorsed. I think some of the detail stuff can be debated adequately in the Legislature.

Interruption.

Mr Phillips: Keep going.

Mr Foley: I don't know about this all of a sudden.

I think it's important that we stop doing what we've always done in the past, and that's what this bill is all about. We won't know all the answers; 10 years from now we won't know all the answers. But I know as a consumer that we went through a whole lot of this — I heard Bell make all these arguments before they allowed a lot of things to occur in the phone industry that couldn't possibly have happened before. Yet I know that every time I turn around now, a number of years later, my rate is going down, and that makes me pretty excited. I think you have set up the system to do that and then monitor it over a decade, not over a month, not over a year, not over two years.

Mr Wayne Lessard (Windsor-Riverside): One of the things that we heard from Mr Osborne from Ontario Hydro the other day was he was likening what this process was about with what happened with the telecommunications industry. What we saw, even though long-distance rates have gone down, is that local service rates have gone up, so that the benefits of deregulation in the telecommunications business, which Mr Osborne is likening this to, haven't gone to many small residential consumers who are only using local service.

I agree with you that the titans will take care of themselves, and I understand your concern about small business consumers. My concern is with residential consumers. I don't see the protections with respect to rates in this bill for small residential consumers. I would say to you that that protection against increased rates isn't there for small business people either, and you have every reason to be concerned about that.

You said that you fully endorse privatization of Ontario Hydro. I don't support that view, however, and the NDP doesn't support that either. The minister has said to us, "This isn't about privatization." I don't know whether you have expressed those views to the minister, but he says that's not what this is about; it's about something else. We're trying to figure out what it is. Maybe you could tell us what you think this is all about.

Mr Foley: No, I'm not going to go there. What's that saying? "Talk to the hand here," or whatever it is. I don't know.

What I know is that it's got to be structured, from my chair, in a manner that creates competition. The Ontario Hydro rates are not competitive on a world basis, and that's reality. If they're not competitive, that means that as residential people we're already paying a higher rate than we should have to pay and than other people are paying. A continuation of the status quo doesn't mean I'm getting a deal. It may mean I'm comfortable because I can see it and feel it and touch it, but it's not the best deal I know that's potentially out there.

I think this is about the potential. In my mind, it's about structuring it so that the potential can come to fruition and not be frustrated by just changing the deck chairs on the Titanic.

Mr Ted Arnott (Wellington): Mr Foley, thank you very much for your presentation. I thought it was excellent. You've done a good job of representing the viewpoints of your membership.

In talking to small business people across the province, what I hear most consistently with regard to this bill is the expectation that rates will go down, lower than they would have been otherwise without the bill. I think most small business people feel that when the monopoly is ended and competition enters into the marketplace for electricity, there will be tangible benefits.

I would ask you this question: For the small business people in your riding, how big an impact do Hydro rates have on future investment decisions, and will this bill more likely lead them to feel more confident about the future and invest more, creating the new jobs that we need in the Sudbury area?

Mr Foley: Most small business people I know are undying optimists. I say there are three realities: There is never enough time to do what needs to be done; you probably have everything you've got on the line, including probably money from your mom and dad, and you don't have a margin for error; and you have to exploit every opportunity for success, at which point rule number one usually kicks in.

I think that most business people who have energy as a major component of their costs — and if you're running a bakery, guess what? That's a major component of your costs. We know that you can get the best butter tarts in Canada here by one of our local businesses. If you could reduce their costs, I suspect they would find a way to convert that into increased opportunity for themselves.

At a large level, huge investments — and I'm thinking of someone who decides to open up a smelter — they look

around the world at energy rates and they decide where that is. So if you want to bring in the big players, you have to be able to have a rate — they consume so much that a small difference matters.

To the small person, I'm more worried that they're scraping by. A decrease in rate increases their margin of success, and that's important. Like I said, there's a crazy gene that goes in most businessmen's heads. They'll take that opportunity and they'll run with it and we'll never be able to figure out what they did or whether that was the scintillating change. But they will look at the end of the day and say, "I've got more money to invest and I'm going to do it." I believe that. Most people will take that extra step if they can find a way to reduce their costs.

The Vice-Chair: Our time is exactly up. I thank you very much for your presentation.

SUDBURY HYDRO

The Vice-Chair: I would like to now call upon Mr Harvey Prudhomme of Sudbury Hydro. Welcome. You have half an hour to make your presentation. I would hope you would leave some time for questions at the end.

Mr Harvey Prudhomme: I certainly will. I've got copies of my presentation.

The Vice-Chair: You may wish to pass them around, or the clerk will get them and pass them around. For the purposes of Hansard, if you would identify yourself prior to your presentation, I would appreciate that.

Mr Prudhomme: Good morning. My name is Harvey Prudhomme. I am the general manager of Sudbury Hydro.

I would like to focus today on four areas of concern, notwithstanding the other issues, including the stranded debt, Ontario Hydro's competitive monopoly, future customer reliability and service. These are issues that are being addressed by other presenters, including North Bay Hydro, Sault Ste Marie PUC, to my understanding, and district 9 and some of the private sector presenters who are here.

The areas I wish to focus on are section 72 of the Ontario Energy Board Act, 1998; section 131 of the Electricity Act, 1998; the formation of the board of directors; and the development/contribution capital issue. We would like to focus on those four issues.

First I wish to give an overview of Sudbury Hydro to give you some concept of where we're coming from. We are a community-owned, community-operated and community-minded utility, a heritage that began over 100 years ago when the fledgling community of Sudbury became the first community in Ontario to own and operate its own electrical generation station. While the demand for electricity has increased from the original 75,000 watts available to 200 million watts, the drive to keep customers at the leading edge of innovation has remained with the Sudbury Hydro-Electric Commission.

1000

Today, Sudbury Hydro services the needs of 40,000 customers within the city of Sudbury and serves as a utility contractor for parts of Nickel Centre, including the

townsites of Falconbridge and Coniston. From the original steam-powered plant, we have moved to 25 modern substations controlled by the latest in computerized equipment. This system supplies reliable electricity to residential and commercial customers, ensuring that the community has the electrical infrastructure to grow and prosper.

Sudbury Hydro continues to meet the challenges of customer service by developing new ventures to promote new and secure economic development for the community it serves. Most recently, we expanded our own communications network to provide a state-of-the-art broadband fibre optic telecommunications system for the area. This system provides for the telecommunication needs of existing institutional and commercial customers and paves the way for a host of new high-technology businesses within the Sudbury region. We are also actively participating in development of a community district energy system supplying cold and hot water with an electrical generation portion. These initiatives are with private and public sector alliances and partnerships.

"Community-owned and -operated," and "community-minded" are not just buzzwords at Sudbury Hydro. They guide all of our business decisions. This commitment to our heritage and future, combined with local control, will ensure that the needs and concerns of the community guide us.

We are debt-free and have not raised rates or user fees since 1993, unlike Ontario Hydro, Bell Canada, cable TV and the gas companies. We intend to serve the community as a distribution company and offer competitive products and services in all forms of energy and communications.

I will now address our concerns with the legislation.

Section 72 of the Ontario Energy Board Act, 1998, has limiting powers for newly created municipal distribution companies. Such limitations are not contained in the legislation for the Services Corp, nor of the gas and telecommunications companies. This utility and others have installed broadband, high-speed fibre optic systems for our own use, including our SCADA system, which is our automatic remote control system, automated meter reading, and as mentioned, for community-wide use. We are also a partner in a district heating and cooling system currently under financial and engineering review.

These two ventures, combined with the ability to market other forms of energy, including gas and value-added products, will provide synergies that will maximize our revenue, minimize our costs, assist in economic development and enhance customer value. These benefits must not be jeopardized in the future by having our competitors use this section of the act to challenge our position before the Ontario Energy Board, forcing Sudbury Hydro to incur excessive litigation costs. We ask for a level playing field. Let our customers determine the marketplace, not a few words in an act which are not required under this section.

I'd like to focus also on section 131 of the Electricity Act, 1998. This section of the act limits the ability of existing municipalities without hydroelectric commissions to establish new distribution corporations after the act

receives royal assent. Northern Ontario has several municipalities, including five within the region of Sudbury, the Tri-towns, Timmins, Elliot Lake and Kirkland Lake, that for various reasons have not previously formed utilities. Municipalities in northern Ontario currently with utilities will continue to have all of the advantages that a distribution company can bring, including local jobs, dividends, new services and assistance with economic development. Municipalities that continue to be served by Servco will only have the 1-800-GOOD LUCK number in Toronto.

Interjection.

Mr Prudhomme: No, we have a much better number in Sudbury. At least we'd answer the phone.

A number of municipalities and MEUs along the Highway 17 corridor between Sturgeon Falls and Espanola have begun formal discussions on the creation of an alliance. The Rainbow Country Alliance group's aims and objectives are to retain local northern Ontario control of the distribution assets and partner in competitive services. This group encompasses a 100-mile length with an approximate base of 100,000 customers, if we count the current Ontario Hydro customers in that area. A similar distance in southern Ontario, ie, Hamilton to Claringview, would have an approximate two- to three-million customer base in that 100-mile zone. That gives you a concept of the distance and the difference that you must look at when you examine the northern Ontario areas.

The rationalization of the northern distribution assets among five centres in alliances such as the Rainbow Country group would give all northerners a share of the rewards in ownership of their distribution systems. These rewards include local control of decisions affecting levels of service, costs, system reliability and economic development, and, most importantly, retaining the jobs in the north as well.

Local utilities have worked very diligently to ensure effective, reliable service for our customers. This is reflected in a recent survey where 93% of Ontarians trust their local utility, whereas Union Gas was at 60% and Centra Gas was somewhat less with 35%. These are very recent survey results.

We strongly urge the legislation to give these northern municipalities the right to form either their own distribution companies or partner with an existing MEU, such as the Rainbow Country Alliance, in order to maintain local control and jobs. The north has too often and too long been left as the poor stepchild of the province by large corporations such as Bell Canada, Ontario Hydro, Union Gas etc, which have centralized their services in the south.

Further, Servco's assets should be given to the municipalities at existing debt owing, after the stranded cost has been removed, since those customers have already paid for the assets and should not be charged twice at some unknown market value. In addition, municipalities should have franchise rights over distribution companies including any remaining Servco systems similar to their franchise rights over gas distribution companies.

Acceptance of the position put forth would speed up rationalization of the distribution system and the cost reductions that can be achieved, a saving which will be passed on to the customer.

On the issue of the formation of the board of directors, I'd like to make a few comments. Upon the formation of the newly created distribution companies, the act gives city council the right, as shareholders, to appoint the board of directors. Currently serving commissioners, whether elected or appointed, have a great deal of experience which should not be lost in a transition period.

While we support the continuation of elected commissioners, it is strongly suggested that formation of new boards include existing commissioners, at least until their current elected term expires.

On the issue of contributed capital, Bill 35 is silent on the authority of new distributors to impose charges for the provision of plant required to serve new growth. Many MEUs adopted the principle that new growth should pay for itself. We are concerned that by not being addressed in Bill 35, such charges are at best in jeopardy. We urge the government to include in this act the continuance of the current provisions or similar mechanisms to fund capital work to serve new growth.

In closing, we agree with many significant aspects of the legislation including the OEB control process, structuring under the Business Corporations Act and the concept of competition generally. We anxiously anticipate the challenges and rewards of the new marketplace; however, we urge you to exercise caution in your deliberations for the protection of the customer.

We thank you for your attention and good luck in your deliberations.

The Vice-Chair: Thank you very much, Mr Prudhomme. The caucuses have six minutes apiece, beginning with the NDP, Ms Martel.

Ms Shelley Martel (Sudbury East): Thank you, Harvey, for coming here today. Let me focus for a second on the concern you raised with respect to section 131, which is the section that limits the ability of the existing municipalities to establish new distribution corporations. Why do you think the government has that section in this act?

Mr Prudhomme: We can't guess where the government is coming from, but it's our feeling that this government has decided that Servco will retain all of its assets and not allow these municipalities to even have the option of buying those assets. As you're aware, many municipalities in the north — I can't speak for Valley East but they're here today. They have attempted to go through the formation of a utility now for several years, off and on. They have been blocked. We saw the Lincoln county situation down in Lincoln where they spent three years, finally before the Supreme Court, trying to establish a utility within their municipal boundaries at several thousands of dollars in cost both to the MEA and Lincoln itself.

We don't believe that Ontario Hydro Servco should exist in northern Ontario. We believe it should be turned over to the northerners and not run out of Toronto.

Ms Martel: Part of the concern, although you didn't raise it, which we have has to do with the stranded debt, what exactly the level will be by the end of the day, because regardless of what happens around restructuring, that is an issue that has to be dealt with. The minister has repeatedly said that through this process and through the reorganization, residential users, particularly of hydro, would not experience a rate increase. In fact, he anticipates there will be a rate decrease.

This is a concern to us because we're not sure it's true, but if one wants to believe the minister, then one would think the minister would be quite happy to actually put that guarantee in the legislation, state quite categorically in law that as a result of this reorganization residential users will not be forced to pick up the tab and that rates will be frozen and they will not go up.

We fully intend to move that clause when we start the clause-by-clause, but what would your reaction to that be, given the number of customers you serve?

Mr Prudhomme: It's very difficult to give a guarantee that rates will not go up. You also have to look at the fact that if we don't go through this process, rates will go up under the current system. The only reason, at least officially, that Ontario Hydro has not raised rates in the last four years has been that the government has said it can't.

I don't think the residential customer is in danger of any large increase coming out of this process. I think there are opportunities. Rates eventually could go down, but it's going to take some time, three to five years.

1010

Ms Martel: Let me back up. You're saying quite clearly that you don't think residential customers would face a rate increase. I assume that Inco will come today and say very clearly that they certainly can't afford any kind of increase. But at the end of the day someone has to deal with the stranded debt. The level of that remains to be seen, but it's probably in the order of \$30 billion plus.

How realistically are we going to deal with that? Who will pick it up? Our friends from the chamber just came — you sat through their presentation — and said they shouldn't be struck with this either, shouldn't be hit with this bill. Who then deals with it? It is going to be a significant cost that someone has to assume.

Mr Prudhomme: I assume that the stranded debt is going to be picked up by all consumers in this province. It should be equally shared among the residential and among the Incos and the Falconbridges of the world. Perhaps they should pay a bigger chunk because of course they use a much bigger chunk of electricity.

The issue is that we have a debt, we've got to pay it and somehow it's got to be worked into the rates. It's currently in the rate base now to a certain extent, but I'm sure there's a large percentage which may not be in the rate base. Somewhere down the road rates may increase overall across this province in the short term to get that debt down. If we truly allow competition on the generation side, which we're not doing with this legislation at this time, rates may go down, but not as long as Genco continues to have 93% of the market.

Mrs Helen Johns (Huron): I just have two quick questions. I want to share my time with my colleague.

First of all, would you agree that approximately 40% of the bill we pay now goes to pay off interest and debt for Ontario Hydro?

Mr Prudhomme: I could never understand Ontario Hydro's accounting system, so I couldn't answer that.

Mrs Johns: We have this chart that shows that 40% of every bill in the province is going to interest and debt charges. Of course, after the time they come in, that 40% will continue to go. So we are paying for the stranded debt now and we will be paying for the stranded debt later. There is no increase in debt happening as a result of Bill 35. We are paying for the stranded debt as we speak.

I need a short answer because I don't want to cut into Mr Gilchrist's time. I was interested in the fact that you enter into different businesses than the typical business of an MEU and I want to congratulate you for that. That's very exciting.

What we were concerned about when we were developing the legislation was that we didn't want MEUs going into high-risk businesses that may in effect take some of the money that should be coming back to the ratepayers or give them increased rates. You would understand our concern to care for the ratepayers and the taxpayers of Ontario.

How would you suggest we put that into legislation so that we minimize hare-brained schemes, yet let municipal electric utilities go into issues that may help us in the future?

Mr Lessard: No pun intended.

Mr Prudhomme: No pun intended.

Mrs Johns: I'm not known for my good wording.

Mr Prudhomme: Local municipalities are accountable to the electorate in their areas and so are local hydro commissions. I guess you'd have to leave it up to the judgment of the commissions and the judgment of the councils and the judgment of the people in that area whether or not they support utilities moving into ventures such as telecommunications or district energy. You have to make sure that the people you hire are wise enough not to get into hare-brained schemes. But we shouldn't need Toronto and the legislation to tell us, "You can't do these things," when our competitors can do them.

Mr Steve Gilchrist (Scarborough East): Thank you very much for your presentation this morning. Before I launch into a couple of questions, I think I really should put on the record, and maybe invite your comment, that Ms Martel has raised the spectre that there is some uncertainty whether or not rates may go down. Interestingly enough, after two full days of hearings, neither of the two opposition parties has come up with a single example anywhere in the world of any jurisdiction that went into deregulation that didn't have a rate decrease.

But right here in Ontario, we have groups such as Carl Block, co-chair of the Samia Lambton Chamber of Commerce. For Samia, it really becomes a competitiveness issue. Deregulation of the electricity system will end up in lower costs, for not only the homeowners but for the in-

dustries in Sarnia, because electricity is a very important component of cost. One of your colleagues, Jim Collins, chairman of Port Hope Hydro, said just two months ago, "We're pleased, because we're going to be able to lower the cost of power to our customers, no question." Are they incorrect in their assumptions?

Mr Prudhomme: I don't think anybody's incorrect in their assumptions. I guess reality will tell us where it's going in the next three to five years. I didn't say the rates would not go down eventually. I think there's a lot of opportunity for load shifting for some of our institutional customers, where they can save dollars on the power cost.

But again I go right back to the generation. We've had several generating companies talk to us about building generation. They're all very concerned about investing dollars in this province as long as Ontario Hydro has its huge 93% monopoly, which is not being broken up. You may not be aware of it, but FERC in the US has just turned down Ontario Hydro for further sales in the US in an open competitive marketplace, because the Ontario market is not competitive at this time.

Mr Gilchrist: Precisely, because we don't allow equivalent access for American companies. I'm sure you're well versed in what's happening in the United States. As companies down there have merged to create giants larger than Ontario Hydro — at one time Hydro was the largest generating utility in North America. We're not any longer. Isn't it somewhat ironic that in going to a competitive marketplace we will allow access for Americans as they will allow access for Ontario Hydro, yet we've heard a consistent message from MEUs that they think Hydro should be broken up at a faster rate? It seems to me, and I invite your response to this, that the less competitive Ontario Hydro is as a continental player, the greater the chance you would have American companies able to lever their size and come in and underprice Ontario Hydro. Does it not make sense for homegrown consumers and taxpayers to start out the process, at least, with one very strong player in the game so that we can keep as much of that market share and hopefully grow into the States?

Mr Prudhomme: If you want to put something in the legislation that might help lower rates, why don't you tell Ontario Hydro that within three years they must give up 40% of the marketplace? You will then encourage new generation in this province. Let Ontario Hydro take the risk. If they want to invest and sell power in the States, then go and take the risk down there on their own, but don't do it at the expense of the consumer in Ontario.

Mr Sean G. Conway (Renfrew North): I want to ask a couple of questions. I believe personally that down the road, because of new technology, new opportunities and new synergies, we will bring rates down, given what we know today. That's my belief. My concern quite frankly is how we get through the next three to five to seven years, because the real problem as I see it is how we manage this multi-billion dollar debt that has been built up over the years, largely because the nuclear power division has not performed as advertised. That's the problem I see.

Ontario Hydro just a few months ago produced a report that said the Ontario Hydro board of directors used its rate-setting authority to exclude from the rates a number of costs they felt were unrecoverable. They did so on the basis that there was a rate freeze. That meant that for this past year the corporation took a \$6.5-billion writedown. That's not money that's gone away. We've got a rate freeze, but all we've done is, in the case of the year 1997, parked \$6.5 billion worth of debt obligation to be paid at a future date by someone else. I accept my share of that responsibility.

I want to be clear that my colleagues and I believe there is some light down the road, but it's just how we reasonably and fairly pay off this debt, how we sensibly get into a competitive marketplace and deliver benefits that I believe are there, for all classes of Hydro customers in all parts of the province.

Let me ask you this very simple question, Harvey. Thinking over the next five years, because you know this business from an operational point of view much better than I, what is it going to take for you as a utility manager to deliver? What policy changes will this committee and this government and this Legislature have to give you as a utility manager to deliver hydro rate benefits to a 70-year-old widow living in an apartment in downtown Sudbury or a 40-year-old part-time farmer who lives out in the valley or down in Hanmer who is a customer of yours, let us say, even if they aren't now?

Mr Prudhomme: I think because of technology you've got to give us some economy of scale. This is why we have formed this alliance. On the distribution side, we know that an economy of scale even over a 100,000-customer base will start to return lower costs to the customer.

1020

Mr Sean G. Conway (Renfrew North): So you need a larger area in which to do business?

Mr Prudhomme: A larger distribution system, because our technology costs are so high that we want to spread it out among more customers in order to lower the cost.

Mr Conway: So the point around section 131 is a real concern. That has to be dealt with.

Mr Prudhomme: It's a real concern for us. You've got to give us the opportunity to make sure that the electricity generation market is wide open and we can get out there and get the best price for our customer.

The other concern we've got is on the metering side.

Mr Conway: But 70% of this bill is generation. If I'm that senior citizen in downtown Sudbury or I am the farmer out in the valley — and I haven't been to the Harvard business school, but I'm thinking that if I'm going to get a benefit, you've got to deal with 70% of that bill. If 70% of that bill is generation, surely that's got to be the area where we've got to do something.

Mr Prudhomme: You want to focus on generation. We're heading now in a direction where we're actually putting in some small generation, for example, our district heating system. We know we can get ourselves off the

spot market for three or five or 10 megs of power. We know what the spot market cost is. If we can avoid some of the spot market problems, we know we can eventually lower the total cost to the consumer in the Sudbury district.

Mr Conway: What is the single biggest impediment, then, with that residential consumer in Nickel Belt or Sudbury, what is the single biggest problem you would worry about over the next five years as preventing you from delivering a rate benefit to the residential or farm customer in Sudbury and district?

Mr Prudhomme: Getting very competitive generation from more than one supplier.

Mr Conway: So we've got to deal with the market power of Genco if we're going to, over the next little while, deliver the rate benefit to the regular customer.

Mr Prudhomme: That's right.

The Vice-Chair: Thank you very much for your presentation.

CANADIAN NIAGARA POWER

The Vice-Chair: I'd like to move on now to Mr Erbland of the Canadian Niagara Power Co. For the purposes of Hansard, would you please identify yourself prior to your presentation.

Mr Mardon Erbland: My name is Mardon Erbland. I'm president and chief executive officer of Canadian Niagara Power Co Ltd. Our company is also known as CNP. I'd like to thank the committee for the opportunity of a personal appearance. Canadian Niagara Power intends to provide a detailed written submission to the committee prior to your August 20 deadline, but in this morning's oral presentation I'll be directing my remarks to issues of special importance for CNP while leaving some of the more detailed and specific issues for the written brief.

CNP occupies a unique position in the Ontario electric business. We are one of the few investor-owned electric utilities in the province, with roots that go back over 100 years. CNP was incorporated in 1892, and in 1995 an act of the Ontario Legislature, that is, the Canadian Niagara Power Company Limited Act of 1995, continued our company as a body corporate, with share capital governed by the Ontario Business Corporations Act.

We operate under a franchise agreement from the town of Fort Erie and are the sole electric distributor within the town, providing electric service to over 14,000 customers. CNP wholesales electricity to Cornwall Electric, and we have sold into the Ontario interim market. We have also signed enabling agreements with a number of US utilities. Despite this array of wholesale power marketing expertise, CNP has never bought electricity from Ontario Hydro. As a consequence, we have never been subject to Ontario Hydro regulation.

CNP built, and still operates, the Rankine generating station, a 93-megawatt plant that was the first generating station on the Canadian side of the Niagara River at Niagara Falls. This plant was completed in 1905 and

CNP's delivery of electricity to the Fort Erie area commenced in 1907.

We are one of the few fully integrated electric utilities in Ontario, with operations that span all segments of the industry, including generation, transmission, distribution and commodity sales. We operate 32 kilometres of high-voltage transmission lines and approximately 900 kilometres of distribution lines supplying six substations. We are owned 50% by Niagara Mohawk and 50% by Fortis Inc, a Newfoundland-based company. We operate as an autonomous OBCA company with our own board of directors.

I hope this brief bit of corporate history conveys to the committee a sense of the uniqueness that is Canadian Niagara Power. While we accept that our vertical integration will come to an end under Bill 35, I believe that many of the objectives of Bill 35 are already embodied in the operations of Canadian Niagara Power.

With this as a backdrop, I turn to some specific concerns and recommendations. As I proceed, I'd ask you to bear in mind that it is our uniqueness that gives rise to these concerns, and we therefore believe that the majority of our recommendations can be accommodated with relatively minor changes to the current bill. We also believe that few of these changes would have implications beyond CNP.

As a matter of principle, Canadian Niagara Power fully supports the government's commitment to creating a competitive electricity system in Ontario. We share the government's belief that customer choice through free and open competition will benefit the economy. We also believe as a matter of principle that the legislation and subsequent regulations which create this environment must be drafted to provide equal opportunity for all participants. Those of us who are already competitive companies under the Ontario Business Corporations Act must not be disadvantaged, even if inadvertently, by the provisions of the act and the subsequent regulations.

I have five areas of comment with respect to Bill 35 in its present form. These are the contract cancellation provisions, the competition transition charges to be imposed on generators and consumers, the transfer tax provisions, the transition provisions for initial licensing and the treatment of CNP's transmission lines. I'll elaborate on each in the order mentioned.

CNP is concerned with the contract cancellation provisions because of the negative effect that subsection 25(3) would have upon long-standing contractual arrangements between CNP and Ontario Hydro for the efficient use of water on the Niagara River. To understand this issue, I ask the committee's indulgence with a brief bit of history.

Ontario Hydro's Sir Adam Beck plant at Queenston enjoys significant efficiency advantages over CNP's Rankine generating station. This is because the Beck plant is located farther from the Falls and therefore has a larger hydraulic head. The Beck plant is able to generate substantially more energy from the same quantity of water than the Rankine plant.

In 1954, under an oral agreement, CNP began to allow Hydro to utilize our water entitlement to generate electricity. In exchange, a portion of that electricity was delivered back to CNP for distribution to our customers. This water exchange arrangement was formalized in a 1971 agreement that complemented a pre-existing power exchange agreement that had been entered into in 1962. These long-standing arrangements have allowed both companies to benefit, but perhaps even more importantly, they have ensured that the available water from the Niagara River is used in the most efficient and effective way possible.

It is our belief that this long-standing arrangement between CNP and Ontario Hydro should continue and that the associated agreements should be exempt from the cancellation provisions of subsection 25(3). To provide clarity, we argue that Bill 35 should incorporate an additional schedule of existing contracts that are to be exempt from the cancellation provisions of the act and that the two agreements just mentioned should be included in this schedule.

1030

On a related note, CNP understands that the existing contracts with Ontario Hydro will be transferred to its successor companies. We support the transfer of these contracts to Genco and we believe that by doing so we will continue to ensure that the water on the Niagara River is utilized in the most efficient way possible.

Our second concern is with the competition transition charge for generators described in schedule A, subsection 79(4). Under the provisions of this subsection, every generator is to pay a charge to the Financial Corp in respect of electricity generated by it in Ontario. CNP's Rankine generating station has been producing electricity since 1905 and in no way has contributed to the creation of Ontario Hydro's stranded debt. In fact, the existence of the Rankine plant and the associated water exchange and power exchange agreements has, in its own small way, helped to keep Ontario Hydro's stranded debt lower than it would otherwise have been.

As a consequence, we believe that electricity produced from the water entitlement associated with CNP's Rankine generating plant should be exempt from this charge. Although section 80 provides for regulations exempting persons, or classes of persons, from the generation charge, as a matter of certainty, CNP would prefer that Rankine generation be given this exemption, which would reflect the plant's history, through a schedule appended to the act at the time it is passed.

Schedule A, subsection 79(5), provides for a similar charge to be paid by every consumer in the province. CNP believes that the residents of Fort Erie and a certain number of other municipalities in Ontario that have never been serviced from Ontario Hydro should be exempt from this charge. Since CNP has never purchased electricity from Ontario Hydro, our requirements for power, and the requirements of our customers, did not give rise to any of Ontario Hydro's stranded debt. As a consequence, we believe that our Fort Erie customers should be exempt

from this charge and that this exemption should be provided in the form of a schedule to the act.

Our third concern is with the transfer tax described in schedule A, section 88. We view this tax as the equivalent of a capital gains tax for MEUs. Our concern is that the bill in its present form provides a two-year exemption period during which MEUs can sell to, or consolidate with, other MEUs without paying the tax. A similar exemption is not provided for sales to taxable corporations such as CNP. The result is to disadvantage taxable corporations such as ourselves and weaken our ability to participate in the consolidation of the Ontario electricity industry through the purchase of municipal electric utility assets from willing sellers.

CNP supports the government's objectives of consolidating our industry and we are eager to participate in this consolidation through investment. We believe that the transfer tax provisions of the existing bill must be changed to allow taxpaying and non-taxpaying utilities to participate in this consolidation on a fair and equal basis. To do this, we believe that the two-year transfer tax exemption period for non-taxpaying entities should be removed.

Our fourth area of interest is the transition provisions for initial licensing. As already mentioned, CNP is a vertically integrated utility with operations that span all sectors of our business: generation, transmission, distribution and commodity sales. It is therefore important to us that an effective mechanism be provided for initial licensing that covers the full scope of our present activities. To do otherwise would create havoc on day one.

In our reading of the bill we see evidence that the act recognizes this problem as related to the operations of existing municipal electric utilities. We are less certain that the bill contemplates the scope of CNP's current activities. We ask simply that provisions be included in the act to allow for an orderly transition period associated with all of the initial licenses that will be required given the scope of our current activities.

My fifth and final area of concern is the issue of transmission lines owned by taxable OBCA companies such as CNP. As a matter of principle, we support the concept of open and equal access embodied in the IMO. We agree that CNP-owned transmission lines must be made accessible to others on that basis. Of course, the reciprocal of that commitment is that we expect similar access and that we expect fair compensation will be paid to us for the use of our lines, consistent with other lines in the IMO-controlled grid. Furthermore, CNP is in the process of building a new 115-kV supply line to improve system reliability to our customers in Fort Erie. This line is not scheduled for completion until year-end, and we seek assurances that the wording of Bill 35 will not inadvertently disadvantage this line compared to lines that are already in service.

Before concluding, I'll offer brief comments on the issues of market dominance and sizing the stranded debt. There is probably little need for me to repeat the generalities of market dominance concerns. Much has been said, and will be said, about this message by others. Instead, I'd like to make the point that Canadian Niagara Power is

prepared to invest in Ontario. We are already in the hydroelectric generation business and we would like to increase our investment in this area. To do this, we require opportunities to either acquire existing plants or to secure the water rights that would allow us to build new plants.

Canadian Niagara Power and other private investors are ready and waiting to make these investments, thereby reducing the need for Ontario Hydro's successor company, Genco, to raise new capital. I urge the government to pursue a course that will increase opportunities for private investment in the electricity business in our province and reduce the need for Ontario Hydro's successor companies to raise further capital.

On the issue of sizing the stranded debt, I echo what many others have said: If the size of the stranded debt is set too high, the base price of electricity — that is, the price without the stranded debt surcharge — produced by Genco will become artificially low and the very competition that is the heart of Bill 35 will never develop. It is imperative that the right number be chosen for the stranded debt.

In conclusion, I would like to once again thank the committee for this opportunity to appear before you personally. As I said in my opening, I believe that Canadian Niagara Power's circumstances are unique in the Ontario electricity industry and that we already embody many of the objectives that Bill 35 seeks to accomplish. Our written submission will reiterate the points that I have made here and provide additional detail. I ask simply that in your deliberations you recognize the special circumstances surrounding Canadian Niagara Power, and that Bill 35 and the resulting regulations accommodate our company's unique circumstances in a fair and equitable manner.

Thank you. I'd be delighted to answer any questions.

Mrs Johns: Thank you very much for your presentation today. I want to say that we recognize that we have a number of companies that are unique and that offer different services. We certainly do have to accommodate some of your requests and we will be looking at them.

I want to explore the CTC with you. It would seem to me that in the future you would want to be expanding your business's service, since you talked a little bit about looking at different MEUs and the opportunities to do that. If we were to exempt someone like yourself from the CTC and then you took on new customers that had in effect had the benefits of the hydro and had incurred the benefits of the stranded debt, how would you advise me to deal with that situation, since your argument basically comes down to, "My customers presently didn't have any benefit from the stranded debt, so they shouldn't pay," but obviously the ones you take on will? Will that not be just what I would call an accounting nightmare?

Mr Erbland: No, I don't think it would be. As the distribution licences are issued for the Fort Erie area, for example, the consumer charge could clearly be defined in the Fort Erie area. We've been serving that area since '907, so I don't think there would be an administrative difficulty associated with that. Again, I think it would be very easy to account for the fact that electricity generated

from the water entitlement associated with the Rankine plan could be exempt, and I think the accounting could be handled well.

As a matter of fact, if Rankine were not exempted on the generation side there could be some administrative difficulties and questions about when generation is considered generated. If we trade water and Ontario Hydro generates, if that charge applies, where does it apply? Who pays it? I don't think the administrative problems would be difficult.

1040

Mrs Johns: We have rules in there to stop people from being hit twice, both at the generation and the consumer side, so I'm not so worried about that. I'll quote the section of that later on.

For example, let's say I'm in Fort Erie and I'm employed in a business that uses electricity that's generated by Ontario Hydro in Niagara Falls, so I've had the benefit of being employed and having opportunities as a result of Ontario Hydro's bringing electricity to Niagara Falls. But because their residence was in Fort Erie, you believe those people shouldn't pay for some of the debt that was incurred for all of Ontario? You believe that wouldn't be a responsibility of the people who have had opportunities because of electrification in other areas of the province?

Mr Erbland: Ontario Hydro did not bring electricity to Niagara Falls; Canadian Niagara Power did. We had the first plant there. The electricity from our plant is what supplied power to Fort Erie. That's my whole point. The unique circumstances surrounding the fact that Canadian Niagara Power brought that generating plant to the falls and subsequently delivered that power to Fort Erie are what gives rise to my point. I agree with you. If Ontario Hydro had been the ones to bring that and if the people of Fort Erie had benefited from Ontario Hydro investment, then I wouldn't be here arguing for the exemption.

Mrs Johns: What if a new company comes into Ontario from the States? They obviously haven't had the benefit of Ontario Hydro's costs. Should their customers pay for the stranded debt?

Mr Erbland: I fail to see how a new company coming in from the US would bring customers with it. The customers are already in Ontario. What would happen is the company would come into Ontario but the customers would be here. So from a consumer charge standpoint, I think the customers who are here now in Ontario would be the base that would be used to decide who pays the CTC and who doesn't.

Mrs Johns: I hope your understanding from my discussion so far is that this is a very difficult issue. I think that even though a specific area may not have had the benefit in their homes, they may have had benefit that has incurred some of the debt of Ontario Hydro in other areas. It's certainly an area worth reflecting on, I appreciate that, but it's going to be very difficult for us to decide that people in Fort Erie have had no benefit from Ontario Hydro over the years even though you have been their residential person. What I'm learning from this is that we

have to be very careful about the CTC and make sure it's fair and equitable. I take that point. We certainly will be looking at you for other unique opportunities.

Mr Conway: I want to join the committee in thanking you for a very interesting and very specific set of recommendations. I certainly appreciated what you had to say.

As Ms Johns rightly observed, your presentation ought to remind us all how complicated and idiosyncratic this business is. You are a trustee for an outfit that met Adam Beck at high noon 90 years ago on that Niagara Escarpment, and unfortunately, from your point of view, you got cut off at the Queenston pass, but you were there at the beginning.

I have two questions, although I do really think your five points are very interesting and we are going to want to look at those with some greater specific interest down the road.

Stranded debt: I think everyone agrees. What I'd like from you, sir, is what would you advise the committee, given the absolute centrality and importance of that decision — how much stranded debt will there be, how will it get apportioned — what mechanism would you recommend that the government or the Legislature employ to ensure that there is the greatest transparency and the greatest fairness in arriving at that decision?

Mr Erbland: From day one I would have recommended an auction of all the assets. I think the best way to price the stranded debt is to let the market do that. I would have put all the generation assets up for auction and seen what the market bid. We're beyond that now, so what I would say at this point is that in sizing the stranded debt I'd be very careful that there be none of it attributed to anything other than the nuclear. If there is stranded debt associated with Hydro plants or distribution lines, I think there ought to be a look taken at optioning those assets.

CNP would be willing to bid on all those assets. We would love to bid on either generation or poles and wires from Ontario Hydro. If there is a claim of stranded cost associated with the Hydro assets or the poles and wires, let's revisit whether we could option those.

On the nuclear side, I think we've beyond that. Frankly, I am at a loss and it's not something that I'm close to on how that stranded debt would be sized for the nuclear business. I know it's very important that it be sized right. As I said in my presentation, if it's made too big the price will be too low and there will be no competition as is the heart of the bill.

Mr Conway: I really appreciate this, but again, it's this nuclear problem. I don't doubt that the auction value of the hydroelectric system or the poles and wires or the fossil system would be quite attractive. But what do we do with this nuclear component, which is the single largest component in terms of generating capacity, debt and difficulty in this gargantuan public enterprise that is Ontario Hydro? What do we do with that?

Mr Erbland: I wish I had an answer.

Mr Conway: I need an answer.

Mr Erbland: All I can caution you on the nuclear side is that the number has to be right. And at auction, even though —

Mr Conway: What would you pay for it?

Mr Erbland: Nuclear, I don't think we'd pay too much.

Mr Conway: But you see my problem. That's exactly what I would expect the auction to tell me. Then how do I protect this 70-year-old widow in Sudbury, because my worry is — anyway, thank you, sir.

Ms Martel: Thank you for your presentation and for talking to the committee about the unique situation.

I just want to follow up from where my colleague from the Liberal Party was going with respect to the stranded debt, because you certainly made clear to all of us the importance of getting the right number, for all kinds of reasons which flow from that. My understanding of the process that's now underway to get to that number, whatever it may be, involves some work that's going on by the Minister of Finance and I assume just a whole cadre of consultants, brokers and everyone else who's in on it to try to arrive at that.

I guess I am worried about two things: What is the mechanism for the public, outside of all of those people, to have some input into that process? And do I feel confident at the end of the day that it's transparent enough and independent enough that at least we'll be able to say, "The public had some input, we felt the process was transparent and if we got the wrong number, at least we all got there together, and we're wrong"? I worry about the process that's underway right now, which is very much a government-initiated process with what I understand is no kind of public input at all.

Do you think there's a better way, outside of the auction, which is, as you pointed out, an interesting way to do it, some better way that would be more transparent, that would allow the public to have their say, that would then give us all the confidence that we arrived at this together?

Mr Erbland: I may sound repetitive, but I really don't think there is a better way to quantify stranded debt than a public auction. The market decides the value of the stranded debt. I just urge the committee to be very careful that the only assets giving rise to the stranded debt are the nuclear. To the extent that there is stranded debt associated with Hydro plants or lines, I think there ought to be a revisit of whether the auction arrangements would be the right mechanism to quantify that debt. On the nuclear point, I'm lost for suggestions, other than to say it's important.

The Vice-Chair: Thank you, sir.

Mr Erbland: Thank you very much for the opportunity.

1050

NORTH BAY HYDRO

The Vice-Chair: I would like at this time to call upon Mr Wills and Mr Vezina of North Bay Hydro.

Mrs Johns: Mr Chair, just as a qualification as these people are coming up, the subsection in the act that ensures that there's no double charge is clause 80(1)(k).

The Vice-Chair: Everybody interested get that? Thank you very much.

Welcome, sir. For the purposes of Hansard, would you please identify yourself prior to your presentation.

Mr David Wills: Mr Chair and members of the resources development committee, good morning. My name is David Wills. I am the general manager of North Bay Hydro. I am here today to speak on behalf of the electricity customers of North Bay, the premier municipal electrical utility in the province of Ontario. With me are the chair of the commission, Mr Vezina, and two of our commissioners, Mickey Beattie and Frank O'Hagan.

I would like to acknowledge first of all the presentations from other municipal utilities in northeastern Ontario and from MEA district 9. We're also aware that the MEA and other utilities in the province will be making presentations. I'll try not to duplicate those comments, which means I will not comment specifically on some issues such as market power of Genco, taxation and local control. Rather, I will focus on a few customer-related topics that are of particular interest to us.

North Bay Hydro believes that, generally speaking, the legislation appears to be carefully and competently crafted, although obviously the full implications of the legislation will not be known until we have seen the regulations and the recommendations of the Market Design Committee.

There are provisions in the bill that we have recommended for years. For example, some of the regulation of Ontario Hydro and the transfer of regulation of municipal utilities are some things we've recommended.

While I'm sure the committee would not consider it a waste of time to sit and listen to praise of the legislation, I am going to disappoint you and move on to a few areas of concern in the interests of brevity.

We have some concerns about the assumption that these changes are customer-driven. It has been said that they were customer-driven. To the extent that they were initiated by Ontario Hydro's wholesale MEU and direct customers, this may be partly true. But neither MEUs nor over 99% of the customers in the province asked for the changes at the retail level that are being contemplated.

Customers are only now becoming vaguely aware of the fact that changes are on the horizon. They're unsure why they are necessary and have little idea what they might be. They groan at the suggestion that the process might parallel gas and unless, like long-distance telephone, there are significant reductions in the price of electricity, these changes will not be welcome.

I've been told that since gas was deregulated my commodity price is less than it was in 1985. That may be true, but what I pay per cubic meter of gas delivered has gone up because of higher customer, delivery and transportation charges. So if the commodity price of electricity goes down, but the delivered price stays the same because of stranded debt charges, transmission, distribution and

customer charges, the process of change will have been a waste.

As an industry we can make and deliver any changes the government desires, but our job will be enhanced if those changes are meaningful and deliver real benefits for all of our customers. So much faith has been put into the conceptual benefits of a competitive marketplace that we hope the realities will not come as a disappointment.

We make the recommendation that — we understand this legislation is described as enabling — we'd like to see the government maintain some control over the restructuring process and ensure that the levers of change are not activated unless there is reasonable certainty that there will be substantive customer benefits.

We have a real concern about the Ontario Hydro market dominance of retail distribution. Lots has been said about Genco. At the time the white paper was released, industry insiders suspected Ontario Hydro contamination of the process. There were key phrases and language that seemed in all probability could only have originated with Ontario Hydro. I list three of those statements that are contained in the white paper.

On page 5, it says, "Some of them" — the people of Ontario — "question why Ontario needs more than 300 local distribution utilities." On page 9, it says, "And it" — Ontario — "has one of the more fragmented distribution systems with over 300 local distribution utilities." And just in case readers had missed the point, on page 12: "Ontario has more than 300 local distribution utilities. Experiences elsewhere suggest that significant economies could be achieved...." These are a reprise of the comments made by Hydro management in its submission to the Macdonald committee, Competition, Convergence and Customer Choice, the so-called 4Cs.

There is no question that the number of MEUs in the province is an anachronism, but municipal utilities are not the cause of high electricity rates. These are a direct result of Ontario Hydro's non-competitive generation, in turn a result of an unregulated monopoly, poor management and particularly its grossly high debt.

However, most municipal utilities agree with the white paper that there could be fewer municipal utilities and it is likely the realities of the new marketplace will lead naturally to such an evolution. The Macdonald committee recommendations were for shoulder-to-shoulder utilities based on expanded municipal utilities and that Ontario Hydro should exit the retail business.

The white paper proposes rationalization, the legislation enables rationalization, but the expected form of rationalization is left unclear. This ambiguity or omission in direction is of particular concern because of the creation of Servco, which does not separate Ontario Hydro's transmission and distribution functions.

Clearly, this has the potential to enable Hydro's vision, on record in the 4Cs, of a vertically integrated utility where it has a monopoly on generation, transmission and retail distribution and can, in its own words, "recover most if not all, fixed capacity costs from captive, full-requirement customers." Ontario Hydro has made it clear

that it believes competition in electricity is in northeastern US markets, not in Ontario. So roughly translated, what this statement really means is that Ontario Hydro can compete in the export market as long as the working stiffs back home can be suckered into paying the bills. This concern was flagged by the OEB in its response to Ontario Hydro's 1996 submission. This is not an original observation; the OEB has exactly the same observation.

Ontario Hydro's new president, Ron Osborne, has recently reiterated this vision, saying he wants Servco, as opposed to MEUs, to be the major player in retail rationalization. Mr Osborne further expresses the view that competition is an event to be won, not an ongoing process that will benefit customers.

We have some real concerns about those kinds of cynical views by what will be major participants in the industry and we think the committee needs to listen carefully to stakeholder concerns and scour the legislation for sections and language that will perpetuate the province's problems with Ontario Hydro rather than correct them. We have some real concerns that Ontario Hydro is being treated like a three-time bankrupt and then they've been asked to come up with a financial plan to repay their creditors.

The geography of northeastern Ontario is vast. With the distances between municipal utilities, rationalization cannot be considered without addressing Ontario Hydro's retail customers. As we've said, North Bay Hydro, the MEA and the utilities of northeastern Ontario have supported rationalization of utilities, but we fundamentally object to rationalization by Servco.

We believe the legislation is problematic because by not separating transmission and distribution it enables Servco to use accounting practices that will purport to show Servco's distribution costs lower than so-called performance-based benchmarks. We're concerned that Servco will leverage such practices to take over supposedly less efficient municipal utilities. Ontario Hydro's past practice says it will then strip jobs from northeastern Ontario and reduce levels of service, both of which are unacceptable to northern communities.

We caution the government against implementing legislation that leaves a one-million customer province-wide retail distribution utility in place with legislative tools and financial and resource muscle to dominate the retail sector in the same manner that it dominates generation. The white paper made much of the principle of a level playing field, but if the teams on the field are grossly mismatched, it really doesn't matter what angle the playing field is.

Our recommendation is that the legislation should address specific mechanisms to permit rationalization of the retail distribution system through the expansion of municipal utilities into shoulder-to-shoulder utilities, especially in northern Ontario.

I have an orphan recommendation here, but it's been referred to earlier, and that's that the legislation should address the transfer price of assets and cap them at the depreciated value, less equity, to enable rationalization. That's been referred to already because of the problem

that you're not going to get rationalization if Hydro simply says, "This asset is worth \$5,000 a customer and if you're not going to pay \$5,000 a customer, then this is not a commercially viable agreement and we're not prepared to go ahead with it." That can stall rationalization right there.

1100

The timing of restructuring: The other area of concern is the proposed timing of the changes. Many, if not most, of the proposed activities are untried and unproven anywhere in the world. The scope is vast, and if the changes are made without adequate testing, training and customer awareness, there will be chaos and it will be customers and retail utility staff who will bear the brunt.

Recently the government has experienced the problems of transitional change with the Ontario Works program. Technical glitches and duplicate administrative requirements have bogged down the new system, making it more difficult than ever to manage the welfare system.

Some quotes from Social Services Minister Janet Ecker seem appropriate and worthy of the committee's attention. She said, "Anyone who thought this process was short and sweet doesn't know much about the welfare system in Ontario." Further, she said: "Anybody who ever phased in new computer technology quite understands that again it is not something you do overnight, nor should you. And if you try, it won't work."

Another example of change that didn't work out as planned was when Ontario Hydro changed its customer information system and billing software and introduced a new bill format; a large job but not an unknown or unpredictable project, with the opportunity for parallel testing to ensure a smooth transition and, relative to the changes that are being proposed for the entire electrical industry, a very modest undertaking. The result was a disaster. The bills were unintelligible and, worse, they were wrong. The number of calls to Ontario Hydro's call centre went into the stratosphere. Ontario Hydro had to take out newspaper advertising to apologize for the mess and customer inconvenience.

Consider for a moment a minor list of what municipal utilities need to do to accommodate the legislation: setting up OBCA corporations; determining strategic directions for participation in wires and competitive activities; splitting the existing municipal utility with associated accounting and labour relations considerations; determining power procurement requirements and putting out RFPs; unbundling costs and designing and implementing new rate structures; updating and/or acquiring new software to handle the customer information and billing system changes; establishing load profiles for customer groups for costing and for customers who do not select interval metering; adopting metering standards and communications protocols for interval meters; applying for and obtaining licences for all business activities that are to be undertaken; liaising with the OEB on default supplier rates; and, if we are to consider rationalization, any time and resources that would be required to actually rationalize or merge two or more utilities; and last but by no means

least, we would also have the business of running our distribution utilities, which is presently a relatively full-time activity.

Our recommendation is that fixed dates or timelines in the legislation be modified to permit flexibility based on experience and needs.

My last point is, will North Bay Hydro's customers benefit from this legislation? We've got 23,000 customers in North Bay; 20,000 of those customers are residential, 3,000 are non-residential, general service, commercial-industrial customers; 2,700 of the 3,000 are small loads, less than 50 kilowatts. So perhaps for a few of the 300 larger customers over 50 kilowatts there may be some opportunities for lower-cost electricity because of their load profiles or because they can shift load.

For the vast majority of the customers that we supply, the electricity commodity represents probably 30% to 40% or less of their bill. They can't shift their usage significantly and will finish up looking for electricity at the same time as everybody else, between the peak periods of 7 in the morning and 11 at night. So we're wary about the opportunities for smaller residential and non-residential customers to realize any benefit from a competitive marketplace in Ontario, given their inability to shift load and the legacies that will dictate the market conditions.

North Bay Hydro's electricity customers are small by provincial comparisons. While the individual loads of small customers are not significant, as an aggregate the small consumer is one of the largest customer classes in the province and must not be forgotten. On their behalf we emphasize that smaller customers deserve specific consideration in this process of change. This consideration should be demonstrated in prudent design, planning, testing, customer awareness and then competent implementation of the changes over a period of time that respects their complexity and extent.

In conclusion, I'd like to thank the committee for the time you've taken to come out and travel the province during a month when a lot of your peers and colleagues are taking a well-earned rest. We appreciate the chance to have a say in a process that will result in significant changes into the way electricity is bought and sold and delivered to the province's citizens. I hope we've been able to contribute some insight into your hearings from a grassroots perspective of the living, breathing ordinary folk who make up the vast majority of the province's customer base.

Mr Phillips: A very thoughtful presentation and you have your finger on the major concern we have, and that is that when the dust all clears the big guy in this thing will do all right. It is the residential consumer and the small business — we were struck by the fact that when Ontario Hydro presented to us they had not one single recommendation on how to improve the bill. They obviously, I gather, think the bill is perfect.

My concern, by the way, is the one that you've identified, and that is that Hydro is saying they are going to sell a lot of their power into the US. That's how they'll keep their plants running. They'll lose 40% of the Ontario

market and sell into the US. But at what price? If to sell in the US they've got to cut the price, the remaining consumer ends up paying that cost.

We've been told, however, that it is imperative that Ontario Hydro stay large in order to compete down the road and that's the reason they will keep, I gather, 100% of their generating businesses and a huge part of their distribution businesses. Do you have any advice for us on how important that is that Ontario Hydro stay very large in order to compete down the road, or is that something that we should pay less attention to and more attention to what's going to happen to the residential consumer?

Mr Wills: I have no idea why we would take advice from Ontario Hydro on anything.

Mr Conway: I'd like to follow up because I think the surprise for me in the first few days of these hearings is not that Genco is as large as it is — that's sort of been out there for a while — but I am really troubled by the vigour of the testimony of Mr Osborne this week. When I look at his presentation and particularly the plan for Servco, the big surprise to me thus far is that Osborne's stated ambition is to aggressively grow the retail company. What I take that to mean is that we are, in the view of Hydro, going to get a substantial rationalization on the retail side but it's not going to be with the consolidation of MEUs in many cases, it's simply going to be a much more aggressive, larger Ontario Hydro retail. Do you share that concern and do you see that as a real problem in terms of delivering the benefits that we all want?

Mr Wills: Absolutely.

Mr Conway: Could you amplify your concern there a bit?

Interjection: Don't take yes for an answer.

Mr Conway: All right. You see, the point you make here around recent experiences is a very good one. Bob Mason's in the back of the room. Bob ran the Ontario Hydro operation in Cobden 10, 15 years ago. It was run well back then. The problem we've got now is we've got this centralized 1-800-GET-LOST business in Markham and it is driving my constituents up the wall. The terror we have is that a bigger, stronger Servco is going to lead to more, not less, of that kind of misery. Is that the view in North Bay?

Mr Wills: Of course it is. We had the irony of retail customers trying to call into the call centre. They couldn't get through to the call centre, so they called the Premier's office. The Premier's office couldn't get through, so they called us and said, "How do we get hold of Ontario Hydro?"

Mr Conway: Thank you. I'll leave it there.

Mr Wills: We have their customers who will call us and we will intervene on their behalf to try and get a hold of Ontario Hydro. That kind of service or so-called service really is a trend, that non-service trend, and we object to it.

1110

Mr Lessard: Thank you for your presentation. As we've been going through these hearings, it seems clear that people are becoming more and more wary that the

prices for electricity are actually going to go down as a result of Bill 35, despite the minister's expressed point of view that that is the objective that's trying to be achieved here. We're asking that he put that in the bill, that residential consumers especially are going to see their rates at least be frozen or go down and not go up, as you've expressed the fear that they may do.

I know that Mr Gilchrist will say that because we can't prove that the prices have gone up in other jurisdictions as a result of competition entering the marketplace, we're out to lunch. I kind of think about the theme of the X-Files, that the truth is out there. Just because we can't prove that rates will go up doesn't mean that it couldn't possibly happen. As you have indicated, the proposed activities are untried and unproven anywhere in the world and each market is unique. My fear is that there are some people who may benefit from this legislation but that there will be hundreds of thousands of others, if not millions, especially residential consumers, who won't. I don't know if I have a question there, but if you have any comments, feel free to —

Mr Wills: The only comment I have is that we talk about how this has always worked in other jurisdictions. Maybe that's true. There aren't that many jurisdictions that have gone down this road; certainly there are some. I don't know if there are any other jurisdictions like Ontario. When you go into a process like this with a \$32-billion debt, it's been observed that that debt has to be paid. If you go in with an open process, you've asked the question, "How do we get that debt right?" That's one of the major questions that is so important as to where that debt is set and what the level is. It will control the amount of new generation that you're going to get. The only hope for competitive electricity prices is competitive generation.

The whole thing balances on that stranded debt number. In other jurisdictions, if you didn't have the stranded debt, then presumably you can go into a process like this and you've got aging and older plants and companies and maybe investor-owned utilities and maybe the shareholders take a bath as competition comes in. But in Ontario, you've got the stranded debt. You have to look after that debt.

Ms Martel: I want to go back to one of your recommendations, which is that the legislation should address some specific mechanisms to permit rationalization, and you talked about the problem particularly in northern Ontario. Can you give us some examples, some ideas that you would have that should be incorporated to deal with that very legitimate concern?

Mr Wills: Obviously in northern Ontario you've got vast distances between utilities. I think as I said in the presentation, if you don't look at the retail customers, there's no point even considering rationalization in northern Ontario. It's not going to happen. You almost have to make a policy decision on how you're going to rationalize. You almost have to give some direction as to how that's going to happen, because if you just leave it open and hanging out there, then to me it's problematic whether it will happen or not. Does it have to be a voluntary process

or is it going to be driven by Servco? It's just left hanging out there as an open question.

I think the Macdonald committee recommendations were good. I thought those were excellent. It talked about you show the utilities based on geographical or political boundaries. I think you can set the boundaries. It talked about share capital depending on the equity. I think that process could have worked well. I support the proposals in the Macdonald committee recommendations.

Ms Martel: I just want to go back to the comments you pointed out about Markham. Markham represents not only a real service problem for folks, but it represents, at least for those of us in northern Ontario, real job loss as well. Your community lost, other communities in other parts of my riding lost quite significantly by that centralization. I would suspect that part of your concern has not only to do with that service but what it means for northern Ontario if Ontario Hydro continues to operate in the way it has, in that predatory fashion.

Mr Gilchrist: Thank you very much, Mr Wills, for coming before us here today. I guess we see a pattern emerging here from the MEUs. I'm struck by the contradiction. You are vexed and perplexed at the ongoing size of Genco, so you believe it's quite appropriate to have competition among, effectively, your suppliers, but you don't seem to share the same zeal to have competition for your customers.

I have a summary of a number of different studies that have been done, including for the MEA, for your association, a study prepared by Adonis Yatchew in 1996, a study by Hydro and the MEA, a joint study into retail electricity service in Ontario, interim report 1994, another study based on the results in New Zealand, the New Zealand Ministry of Commerce, and a study by the Ministry of Finance.

The amalgam of all that is that the expected potential savings by rationalizing the MEUs and providing a more competitive framework for the customers so that they're not tied over a long term to their existing one supplier is \$212 million. Would that, in and of itself, not be a significant savings for the ratepayers in Ontario?

Mr Wills: Yes, it would.

Mr Gilchrist: Thank you. When I read your report — and I appreciate the fact that you've been very candid in here — your exact words are, "the number of MEUs in Ontario is an anachronism." It's a historical aberration that we have 275 MEUs in Ontario. That's almost 20 times the total number of utilities in all the rest of Canada. What do you see as a problem, in this bill, for the MEUs to themselves immediately embrace the idea of competing with Hydro on a more level playing field by moving quickly to amalgamate or integrate their services and compete with them on a more equal footing?

You have 2.7 million customers among yourselves. Hydro has a million. So one supplier is dealing with a million customers; each of you, on average, is dealing with 10,000. I made the point on Monday that that's barely enough customers to justify a decent hardware store, hardly a complete electrical utility. So why are the MEA

and the MEUs not suggesting among themselves that the best defence is a good offence here?

Mr Wills: One of the things you've got to realize is that the average doesn't tell the whole story. You've got close to 300 utilities, but the largest 40 to 50 utilities in the province serve 85% of the customers, so that the majority of the utilities are very small. The distribution of electricity is something that by its nature takes place where the customer is. That's what the distribution business is. That's what we do. There are probably 800 Shoppers Drug Marts in the province as well, because when you go to a drugstore, it's a distribution function.

I'm not making my point well, but you're saying, why don't we get together to compete with Hydro —

Mr Gilchrist: Excuse me, but contrast that with the fact that Hydro is capable of distributing in the most remote parts of Ontario, from one end of our province to another. So obviously you can distribute on a greater scale. And you're right. If I wanted to go further down the road, if you take Toronto Hydro out, which in and of itself would be the fourth largest utility in North America, never mind Ontario, the numbers that are left after that, for the other 274, dwindle into almost insignificance.

I really am perplexed at why the MEUs —and I'll give credit. Your northwestern district has already come together and said, "You know, what we'd like to do is buy Hydro's 40,000 retail customers, and we're prepared to pay a market rate." When they're done, they've got a surplus of generation over consumption. They would be selling power from their hydraulic plants to other parts of Ontario. Why wouldn't all of northeastern Ontario, for example, immediately embrace a similar objective?

Mr Wills: Northeastern Ontario looked at that and we drew the conclusion that it was futile to be approaching Hydro. Hydro has no interest in giving up its retail business.

The other thing about the retail business is that I collect \$1 from my customer. I cut a cheque for 85 cents and give it to Ontario Hydro. I keep 15 cents. I operate a distribution business. Now, I could take the position that I'm not really in the \$1 business; I'm in the 15-cent business, and the 85-cent business belongs to somebody else.

I think the other point I made is that we need to see where the regulations and the Market Design Committee come down on some of these issues, because I may not be in the power procurement business after the Market Design Committee is finished with its recommendations. Once you've got the default supplier and you've got a competitive market, there may not be room for a municipal utility energy supplier. We may be a wires company. I could set up a rate structure where I collect a monthly charge and a charge for using the wires and I can basically replicate the 15 cents that I collect today, and my customer can buy energy anywhere. I think it's a myth that municipal utilities are seen as electricity companies in some ways. I think that decision has to be made in the future. I know a lot of utilities are very aggressively looking at being competitive, but that decision is still somewhere

down the road as to whether the opportunity is there to do that.

Mr Gilchrist: We hope they all embrace that idea. Thank you.

The Vice-Chair: Thank you very much, Mr Wills, for coming here today.

1120

GEOFFREY LAPLANTE

The Vice-Chair: I call on our next presenter, Mr Geoffrey Laplante.

Mr Geoffrey Laplante: My name is Geoff Laplante. Before I begin, I see a lot of tired faces and probably some anxious ones. I know it's getting close to lunch. If you want to take a few short minutes to visit the facilities or get some water, please feel free to do so. I don't expect to be very long.

Mr Gilchrist: We have great capacity and great interest.

Mr Lessard: Are you looking at anybody in particular?

Mr Laplante: No. Go ahead. If somebody's got to get something to refresh themselves, please feel free to do so, and I can wait till the room clears out and calms down again.

Good morning, members of the committee. This morning I want to start with basically identifying who I am and what I'm doing here, and make it clear that I'm not representing any particular group. I have no authority to speak on behalf of any aboriginal or first nation groups here in Ontario.

I'm a lawyer by trade. My employer is Digline pipeline and stringing. We're located on the Nipissing First Nation near North Bay. We're primarily an oil and gas contractor. When I saw the advertisement in the local paper that Bill 35 was making the rounds, if you will, I thought it incumbent upon me to at least propose a few revisions to the bill and draw the committee's attention at a minimum to some issues which I think should be part of this government's mandate.

As a lawyer, I understand the concept of fiduciary responsibilities between governments. I understand the unique relationship first nations across Canada have with the federal government. I also understand the special relationship that aboriginal groups, ie, non-first-nation entities such as Metis nations here in Ontario, have with the province and with the federal government.

Leaving aside all the legal arguments and quagmires they inevitably will bring up, in this bill, upon my reading of it, and it's quite voluminous — the Electricity Act, the Ontario Energy Board Act and related statutes — the preambles indicate that it's "An Act to create jobs...." That is in fact the very first line and the first four words: Bill 35, An Act to create jobs. Throughout the act I can see the framework being established for energy competition and distribution of energy and whatnot, and it's implicit that there would be jobs created in that.

There are appointments indicated throughout this bill to be made by the minister for boards of directors and directorships, CEOs and whatnot, to the IMO. My concern is that there isn't a clear enough mandate to indicate whether this government has a commitment to providing procurement opportunities for aboriginal people or ensuring that their issues are going to be represented at this level. Sure, the Ontario government has ONAS, the Ontario Native Affairs Secretariat, sure, they have the Ontario land claims commission, sure, they have the Chiefs of Ontario in terms of political bodies they can speak to with respect to issues. But having somebody involved in these committees and having somebody involved as a director of these organizations on a day-to-day basis, in my respectful submission and opinion, would be probably a much better way to ensure that aboriginal concerns and voices are heard.

I'm not sure who all you people are. I see your name tags. I haven't met any of you before. I recognize some of the names. Somebody brought up a point earlier that you're capable of delivering power from one end of the province to the other. Typically, the other end, the north end — or, if you look at it the other way, the other end is the south end — is usually marked by huge economic disparity and disadvantage. If those people wanted to come to this committee and bring forward similar issues, many of them couldn't afford it. Many of them don't have the privilege and the luxury of the background that I've been able to enjoy, and people around this table as well. To expect these people to get their concerns into the IMO's hands is unrealistic at best. It's just not going to happen, and if it does, it's going to be second-, third- or fourth-hand information. I just think that before this bill is proclaimed, there should be some concerted effort put into inclusion of or a specific reference to aboriginal positions or aboriginal people being represented. I'm going to draw from specific instances for reference's sake.

Prior to doing that, though, just as some background information, the federal government has a procurement strategy for aboriginal people when it comes to government-based contracts. There's a set-aside of government contracts for aboriginal people. That serves to highlight my point, that the federal government is serious about its commitment to aboriginal people and assisting them in assisting themselves. They're taking steps to ensure that these people across Canada have an opportunity to break into the market. They've aside a block of contracts for these people.

Obviously this act isn't going to be able to do that, and I'm not here asking the Ontario government to do that. That sure is one of my greatest wishes, for that to happen, but this isn't the time or the place. But the analogy can be drawn that aboriginal people or first nations people across this country do enjoy special positions within our society and that governments such as the Ontario government should take some responsibility whether they have to or not. Put that aside. They should take the initiative in some way, shape or form and do something concrete so it's not left to chance. Don't just say: "Don't worry, Mr Laplante.

The minister will make sure that we'll try and get as many aboriginal representations as possible." I say it's time that you put the money where the mouth is, as they say, and ensure that those positions are going to be filled by aboriginal people. Put some directorships aside; find a framework to make it work.

I'm not a legislator. I don't know now to make those things work, but you people have the resources to do it. I'd be happy to provide any instruction I can, but I would think that you're probably better equipped to find and devise strategies to ensure that can happen. So long as you understand the message, that's my point.

I don't know if you have a copy of the act in front of you, but if I can turn to subsection 6(2) of the first act; I guess it's the Electricity Act. Page 7 is the page number that I have. This was downloaded from the Internet, I believe. One of the secretaries at the office got it for me, so I don't know if it corresponds to your numbers, but section 6 of the act indicates the composition of the board. I'm just going to read, for those of you who may not have a copy of it:

"The board of directors shall be composed of,

"(a) the chief executive officer of the IMO; and

"(b) at least 10 and not more than 20 other directors appointed by the minister in accordance with the regulations."

1130

That may be an opportunity to include reference to an aboriginal appointment or opportunity for networking with an aboriginal-based commissioner of some sort to address these types of issues and to ensure that they in fact are brought to the table.

I'm not familiar with every plant location for energy generation in this province, but I would suspect that a great number of them exist by virtue of traditional lands being flooded and reserve lands being expropriated. I know that's the case in a first nation just outside of Sudbury. I believe it's the Wahnapiatae First Nation and Ontario Hydro is still paying some form of a royalty or compensation for it.

There are effects to aboriginal lands and I think it's an issue that can't just be left to chance any more, because if you leave it to chance, chances are it won't happen. I believe that's the reason the federal government has this procurement strategy for aboriginal contractors.

This may be a minor issue in respect to this — I'm not sure if it's covered somewhere else — but section 78 of the act refers to tax exemption. This is really a longly worded section. It has, gosh, 16 or 17 different subsections and throughout all those subsections it indicates that "the Financial Corporation shall pay in each year" any taxes that are payable "to any municipality in which are situated generating station buildings or transformer station buildings" etc.

I don't know if this is covered in another act or not, but one of the concerns I have is that if this act comes into force, and if there are payments owing to a first nation community, is the government going to be able to hide behind that crafted wording to prevent them from paying

any first nation that's due money under this tax payment scheme, or is that in fact covered under some sort of analogous act where a municipality is defined to be a first nation?

It's just something that I would bring up for the committee to consider in their review of this bill. They may want to include specific reference to "or first nation/aboriginal community" as is appropriate.

Third, the act itself, just in a general sense, mentions the OBCA as being the governing statute or framework within which any suppliers must adhere in order to become a supplier under this act.

The concern I have is that that may not be totally fair, because aboriginal or first nations people across this country may choose to retain their special relationship, the fiduciary relationship they have with the federal government. They may choose to adopt the CBCA, the Canada Business Corporations Act, versus the OBCA. There are some strategic reasons why they would want to do that, primarily because of the relationship the feds have with the first nations people and the invocation of bylaws and such. It brings it into a different realm and it brings their concerns to a different court of competent jurisdiction should they have problems with any of the framework. I just suggest that to you, again.

I don't know if it's something that was deliberately done or if it was an oversight. If it was an oversight, please revisit it and find a way to make it work.

These are concerns that I think first nations people — again, I'm not speaking on their behalf — aboriginal people across Canada may have. For those who aren't able to come, I would simply raise those issues. Again, I want to make it clear that I'm not speaking on their behalf because I have no authority to do so.

I'll see if I can get a specific reference for you down the road, but there is a reference to inspectors being able to go on land and do their thing under this act. I'm wondering if there cannot be some sort of revisitation of the appointment of inspectors or the guarantees that aboriginal people will be consulted for prospective talent from their respective communities for people who may be eligible to be an inspector. In other words, if you're just going to go out and have a bunch of inspectors, why not try and implement some sort of proactive policy to give these people an opportunity that otherwise they may not have? Build something into this framework that ensures that they're going to get consideration for inspector jobs, especially if the inspectors are being appointed by the board of directors, none of whom, under the current framework, may be aboriginal people or all of whom may be aboriginal people. Who knows?

But if there are no aboriginal people on the board of directors and they are the people calling the shots as to who gets hired on as an inspector, chances are that the inspectors wouldn't be coming from the aboriginal talent pool. Chances are there aren't many qualified aboriginal inspectors, but if there aren't, get the message out to these communities that you're looking for some aboriginal inspectors to do this type of work, let them know what

kind of qualifications they need to have, and I'm sure you would find some qualified people within a matter of months or years. It's been my experience, in any event, in dealing with aboriginal communities and first nation communities across the country, that they're very resourceful people. If they don't have the capacity, they can find it in short order.

I've got my road maps earmarked with subsection 77(3) of the Ontario Energy Board Act. It refers to the rates: "The board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity and for the retailing of electricity in order to meet a distributor's obligations under section 28 of the Electricity Act."

I didn't understand whether or not this would be binding on a provider that resides, for instance, in a first nation. Can you enforce these types of rate schedules? Would they be exempt if they're under the CBCA? Just questions, again, I put to the committee for their consideration. It seems to be more of an issue of conflict of laws than anything else, which one would take priority. I don't want to comment on it; I just encourage you to revisit it.

The aboriginal inspectors reference would be section 104 of the same act: "One or more inspectors may be appointed under the Public Service Act for the purposes of this part." That's the section that deals with inspectors under the act.

There was one section that I had difficulty reading. I don't mean to be a person who corrects mistakes or grammatical errors, but it just didn't make sense to me. It was section 50. It reads:

"Grounds for refusal.

"An applicant for a licence under this part is entitled to a licence or renewal of a licence unless...." I can't follow that. I think what the section is trying to say is that "an applicant for a licence under this part is not entitled to a licence or renewal of a licence in the event that..." and then list all the criteria. I think that may need to be reworded because it doesn't flow the way I can read it.

Other than that, those are my basic submissions. I'm not sure if there are questions or comments.

The Vice-Chair: We have about four minutes apiece, beginning with Ms Martel.

1140

Ms Martel: First, Mr Laplante, I would like to thank you for bringing the perspective that you do here today. I appreciate that you're not representing any particular first nations concern. I haven't been travelling with the committee, but I understand there has not been representation of a first nations interest to date. I suspect that if you have a good look through the legislation, the legislation is silent on the issues that you've brought forward, but some of the important issues will be brought forward today by Wahnapiatae. I don't want to speak for them, but I suspect they will talk about their concern about who they negotiate with in 1999 when they have to deal with the renegotiation of the compensation package they have been receiving from Hydro. I suspect other first nations, if they were to attend, would want to know who they might negotiate with

to actually get compensation, or deal with on a first-time basis, not even for a renewal as is the case with Wahnapiatae.

I think the government will have to go back and look at these issues because I suspect that outside of Wahnapiatae First Nation there are a number of others, particularly on the James Bay coast, who have been trying to get some negotiations going with Hydro because of flooding of traditional lands. How that process continues under a revised Hydro structure needs to be addressed, so I thank you for your perspective and the one that we're going to hear this afternoon.

Perhaps, though, for the benefit of the committee, you could expand a little bit more for all of us on first nations views of CBCA versus what is outlined in OBCA so that we clearly understand what that mechanism is and what the historical relationship is and how we might continue to allow that relationship to continue even under this act.

Mr Laplante: First of all, I'm not a first nations citizen. I am an aboriginal person of this country; I'm registered with the Metis Nation of Ontario. I do have a great deal of experience with first nations as a result of my former private practice. One of the issues that I dealt with — and I think, Ms Martel, it's a good point that you bring up, that it needs to be clarified — is that I can't speak in terms of what occurred in this particular instance but I can give you some general indications of where the disparity sometimes arises.

If a first nation or an aboriginal community enacts certain articles of incorporation under the Ontario Business Corporations Act and it makes regulations and bylaws thereunder, it almost prevents them from turning around to the federal government and asking the federal government to ensure that their fiduciary obligations are met. The protection mechanisms for first nations in imposing the OBCA on them aren't as great as when they have the opportunity to have the CBCA behind them. In other words, the CBCA may afford them more protection, especially when dealing with the provincial government, because if they're acting under the OBCA, the federal government's fiduciary obligations can't be as easily latched on to in legal arguments.

I'm sure you have an army of lawyers at your disposal. If you revisit your army of lawyers, they can probably explain it in more concrete terms than I can. I just know the experience that my clients had and it would have been in their better interest to have incorporated under the CBCA had they had the opportunity to do so.

Mr Gilchrist: Thank you, Mr Laplante. I appreciate your bringing your perspective, which we had touched on yesterday in Thunder Bay, but you've certainly explored it in far greater depth and I appreciate your doing that for us here.

Let me just say as an opening comment that clearly our intent in Bill 35 is to benefit all consumers and offer opportunities for any individual, any group, any company to participate in a way that they see fit by opening up generation and ultimately the distribution end to competition. We do see tremendous opportunities.

I should highlight for you something we heard yesterday from the Northwest Energy Association, a group of all of the MEUs in northwestern Ontario. They said one of the things that they've been actively working towards is a connection routed through Manitoba, just because the geography would work out that way for one end of the wires, that would take a total of 26 of the remote first nations that currently are served by diesel fuel — very expensive diesel fuel, I should note — and put them on a grid. More important than just the fact that that would lower their costs, it offers the native bands the opportunity to develop a series of small hydraulic projects themselves and to go from being net payers for energy to net recipients.

I know it wasn't your intent, but I'm always struck when people come before us and say, as you did here, that first nations are very resourceful. There's always a "but": But we've got to give them an extra handout; we've got to continue to prop them up through other artificial means. I would ask you, would this not be the best possible means of supporting those 26 remote communities? Giving them automatically the right to develop their own indigenous sources of energy, large enough that they would be net exporters of power, working in partnership with experienced electrical generators, the MEUs out there right now, who, remember, are non-profit and so they themselves would not be exploitative in that sense but would provide the expertise and would be able to form the terminus for either end of this grid, is that not the best possible solution for those people instead of some artificial government subsidy or offset?

Mr Laplante: I hear your point. It's like, if you want to enjoy a level playing field, then let's play level. But your argument really is, give them the motor vehicle but no fuel. It doesn't go very far. Yes, a car is great. I'd love to have a Ferrari, but if I don't have gas for it, I'm out of luck, or if I have diesel fuel for my Ferrari —

Mr Gilchrist: Where do you see the missing gas in this equation? The expertise is provided in a partnership with MEUs. They would be the generators. They would get the immediate benefit. They no longer have to buy the expensive diesel fuel, which is flown in, or trucked in if they're lucky, if they're not as remote, and have a surplus that they can immediately be selling back into the grid.

Mr Laplante: You're presupposing a supplier's going to be fair to these people, and that's not legislated. You may not be able to legislate fairness, you may only be able to legislate parameters of equality. But face reality. There are very few, if any, people from first nations or aboriginal communities who are involved in this type of business. They just don't have the current capacity, and if you want to make sure they have the capacity, you have to legislate opportunities for them. That's my point. I'm not saying give them a leg up, do an extra favour for aboriginal people. No. Make sure that they're represented, make sure that they have a voice.

Mr Gilchrist: That's a good point.

The Vice-Chair: Mr Phillips.

Mr Gilchrist: Can I just very quickly, because he's in the room here today, say that we have someone on the Market Design Committee, which is giving an awful lot of the input on this, who does represent five of the first nations bands: Attawapiskat, Fort Albany, New Post, Moosonee, Moose Cree and Kashechewan.

Mr Laplante: Great. There are over 100 in Ontario.

Mr Gilchrist: But I want you to know that while it's not very large, you have representation there.

Mr Phillips: I appreciate your taking time to be here. I'm not one who feels that we have gone out of our way to artificially prop up the first nations in Ontario. Certainly in the last three years I don't think anyone would accuse the Ontario government of going out of their way to artificially prop up the first nations.

I appreciate your raising several issues here. You're suggesting to us that it's possible that inadvertently the bill may contravene some other existing statutes. I think you mentioned the tax exemption issue, the businesses that may want to incorporate federally rather than provincially, if I've read you properly. Have you any recommendation for how we might proceed on that? You've raised the issues. I gather you're looking for the government to take into account your concern and provide our committee with some assurance that the bill doesn't do what you are concerned it might do. Would that be helpful to you, that we get the government to provide this committee with some assurance that at least your concerns in those two areas are not based on fact?

Mr Laplante: Yes, I think that would be a great starting point. I'm suggesting that you may want to make sure. If you don't have a clear directive on it, I'd suggest you get one.

I'm not retained by anyone. I'm speaking squarely from my own knowledge. As a resident of the province of Ontario, I want to make sure that this is done the right way and that's why I raised the issues. I don't want to come back and find out down the road that, yes, we've got a problem here.

Mr Phillips: Perhaps, Mr Chair, later on there may be things that we can ask the staff to provide us, and certainly those would be a couple of things that I would find useful to make sure that we aren't, as I say, inadvertently contradicting some laws.

Mr Conway: One of the opportunities in the new marketplace, as I understand the potential in Ontario, is greater water power, particularly in areas where first nations have a very real interest and involvement. Do you care to comment on opportunities you know about in terms of first nations communities in mid-northern and northern Ontario for greater water power development that might produce opportunities, not just for first nations but for other consumers?

Mr Laplante: I know that there are some first nations communities that have a number of innovative ideas — not necessarily the communities themselves but people within those communities — for alternative sources of fuel.

Mr Conway: Any specific examples?

Mr Laplante: None that I can draw out right now, but with time I'm sure I could draw some up. You see, there are other sections of these acts that impact on contractors. The Oil and Gas Act in particular is the one that came to mind. I think what you're going to find is that as more aboriginal communities get wind of these opportunities, they're going to start developing their own infrastructure and they're going to start developing their own resources. But I can tell you, and Ms Martel touched on this, that the James Bay or Hudson Bay coastal communities, for instance, are probably best positioned because they're at the mouth or the headwaters of a number of great rivers. There are also some communities north of the Thunder Bay area that would be in good shape.

I travelled to these communities, by the way, when I was a summer student with the crown attorney's office up there a few years ago. It's a real shock. When people say that Indian reserves here in Canada are really a Fourth World population, it's a very accurate statement. They just don't have the same opportunities we do. I would encourage this committee to perhaps send out some feelers to these communities and ask them for some input, because it's a great question. I just don't have the specific answers for you, Mr Conway.

The Vice-Chair: Mr Laplante, thank you very much. You didn't have a handout, did you?

Mr Laplante: What do you mean "a handout?"

The Vice-Chair: I would suggest you get your suggestions together and send them to the committee.

Mr Laplante: No. All I had was the Internet stuff.

The Vice-Chair: I thank you very much for your time.

Mrs Johns: Just a point of clarification for the committee and for Mr Laplante: Section 78 of the bill, the tax exemption section that Mr Laplante talked about, is a status quo section. It's section 52 out of the Power Corporation Act, so it's in existence at the present time. Subsection 104(1), which is the inspector section, is also status quo out of the Ontario Energy Board Act. Just for your information when you're submitting documentation, you can tell us if that's working now and if that's OK or if we need to make changes in a section that has been in existence for, I think, 80 years.

Mr Laplante: Thank you, Ms Johns. Thank you for your time, and good luck.

The Vice-Chair: Thank you very much. At this time we're going to break for lunch. We will be resuming at 1:30 o'clock sharp.

The committee recessed from 1153 to 1330.

NORTHWATCH

The Vice-Chair: This afternoon we're going to give each presenter 45 minutes American time. As you know, that works out to 30 minutes Canadian.

I'd like to call on Northwatch. Is Brennain Lloyd, from Northwatch, present? Ms Lloyd, you have half an hour. I hope that at the end you leave some time for questions. For the purposes of Hansard, please identify yourself prior

to giving your presentation. Go ahead. You don't have to lean forward; they'll pick it up.

Ms Brennain Lloyd: I always lean forward. Good afternoon, committee members. I'm Brennain Lloyd, from Northwatch. We're a coalition of environmental and social justice organizations in northeastern Ontario. We were created in 1988 to provide a regional voice from the northeast on a range of concerns related to environmental, social and community concerns. We've continued to work to fill that mandate through these last 10 years and in fact are having our anniversary this year.

Northwatch and Northwatch's work would be familiar to many members of the standing committee, both through our work in the northeast and in provincial discussions as they relate to the northeast, but also through our appearance before previous standing committees. Bill 118 of the previous government and Bill 76 of this government perhaps are the ones of most particular relevance to today's discussion. As you will recall, Bill 118 under the previous government was the bill to amend the Power Corporation Act and Bill 76 was the bill to replace the Environmental Assessment Act.

I'm not meaning to suggest that it's a frequent or everyday occurrence for us to be appearing before a standing committee; in fact, it's not that frequent an occurrence for standing committees to come to the northeast or to northern Ontario. We want to express our appreciation to the committee for making these trips. Northern Ontario is 85% of the land base of this province, so having two hearings in that region, in Thunder Bay and Sudbury, is both appreciated and appropriate as a minimum.

I wish to cover three areas in my presentation today. One is to provide an overview very briefly of Northwatch's perspective and experiences and expectations as they relate to today's discussion and to Bill 35. I would like to set out a short list of seven elements which we think must be found in this bill, in this set of amendments to an act or acts, to achieve what is necessary in terms of restructuring the electricity sector to serve the public interest and the people of Ontario, which we assume is an interest that we all share. Certainly for Northwatch, chief among those concerns which we consider to be in the public interest are environmental standards and ecological protection. Thirdly, I'd like to do a very brief run-through of the bill to identify some specific areas for amendment or attention on your part and on our part as we continue through this discussion with you over the next several weeks.

Northwatch, as I said, was created a decade ago, in 1988. What motivated the coalition's formation in northeastern Ontario was that there were a number of regional concerns or developments or proposals which were greater and grander than member groups or individual members felt they could deal with at a local level. They affected us regionally and warranted a regional response. Chief among them, there was a class environmental assessment of timber management; there was also a hearing on nuclear fuel waste; and shortly after our formation there

was the release by Ontario Hydro of its 25-year demand-supply plan.

Within that 25-year scheme put out by Ontario Hydro, northern Ontario was going to be impacted heavily. In a number of areas the project proposals included 1,800 kilometres of high-voltage transmission corridors, the potential for a nuclear reactor on the north shore, a number of hydroelectric developments, Patten Post just on the north shore of Lake Huron, on Lake Nipigon the Little Jackfish project and a number of hydroelectric developments in the Moose River basin. In addition to that, there were some other projects underway by Ontario Hydro, the northeastern Ontario transmission reinforcement project being one.

We were caught, in northern Ontario. We were facing a multitude of project proposals, generation developments, transmission developments. We were dealing with them on the ground, specific projects. We were dealing with them at the provincial level within the demand-supply plan. They were overlapping; they were interfacing; they were interfering; they were undermining. The story you heard in one room was not the story you heard in another room. We believed this to be very much the product of an unregulated electricity sector and an unregulated electricity utility in Ontario. From that day in 1989, I believe it was December 13, we have had a concerted and continued interest in seeing the regulation of the electricity sector, the electricity utilities in this province. That interest stays with us today and it brings us into this room with you this afternoon. That's part of our perspective and part of our experience.

Our other experiences include efforts on our part to participate in provincial assessment processes and the demand-supply plan, which, as I'm sure you all know, came to a grinding although welcome halt when Ontario Hydro withdrew its request for approval. We've also participated in Ontario Energy Board rate reviews, which was the only vehicle we found available to have public access, public input into the attempt to regulate Ontario Hydro. Those are our experiences.

Some of those projects I mentioned that were proposed back in 1989 are gone but not forgotten, and perhaps not truly gone: the Patten Post rears its head from time to time. These are projects which we consider to be inappropriate and inconsistent with the needs and the best interests of this region.

During our work on the demand-supply plan, we developed a definition or a design for sustainable development, particularly in the context of development in energy use for northeastern Ontario. It was based on a number of premises. It had three basic, fundamental criteria. One is ecological integrity or ecological security, community stability and environmental sustainability. It also had a number of indicators — community control, a small scale, local generation, local demand-supply planning — and was geared towards the needs of this region.

While northeastern Ontario is certainly unique in many respects, every region in this province is unique, and perhaps if people in other regions organized you would

hear similar stories or similar expressions from them. We really think that kind of regional demand-supply planning is absolutely essential. That's part of our experience. That's what brings us into this room today.

I want to set out those seven elements or seven criteria or components that we think are absolutely essential to this bill if it's to achieve what's necessary in terms of restructuring and regulating the Ontario electricity or energy sector. We really think that the point of restructuring needs to be regulation. The point of changing the status quo is to restructure to that end, to that end of regulation, and creating an electricity scene or system which is accountable, which is sustainable, which is environmentally responsible and which is socially and economically responsible to the people of Ontario, to the human communities of Ontario, but also to the natural communities of Ontario.

1340

I'm going to just run through those seven components. The first is clearly regulation. Regulation has two tracks or two phases. One is those tools which regulate access to the electricity system. We've identified just a short list of those tools, and I think there are four very important tools for regulating access to the grid. This has to be at the very heart of your considerations and discussions as you consider the bills as drafted.

The first tool is that there has to be a content requirement for renewable energy and there has to be a schedule for bringing that content requirement up, for ratcheting up the percentages. I suggest that we start with something in the neighbourhood of 25% and ratchet it up at 5% increments over, say, every two years until we reach at least a very minimum of 50% renewable content.

There are very different ways you can do this. It depends how you want to count the hydraulic. If you want to count Ontario Hydro's current hydraulic capacity, your number would be 25%. If you wanted to set that current hydraulic capacity, which is of a different nature than most of the new renewables will be because it is larger in scale, your number might not be 25%; you might start down around 10%. But the principle is the same: You start with a percentage required component. It's like Canadian content in radio 15 years ago, and we've seen the music industry not only survive but thrive because of that. Perhaps even more important is that we see the renewable energy industry survive and thrive. I think having content requirements is the first step towards that.

The second tool is having high efficiency standards for any new fossil generation that comes into the grid. Access to the grid is determined through a number of tests, and one of those tests is that any new fossil has to meet a high efficiency standard.

The third is that there has to be a carbon tax, or you could call it a dirty power tax, for existing fossil capacity.

The fourth is that there are incentives for energy services; for example, reduced fees for access to the grid for those utilities, those generators, which conduct themselves not just as producers or generators of electricity, but as energy service companies which provide a host of services

that allow the consumer or the customer to have no net increase in their bill because they've reduced their use. I think we can all expect and we should all expect that there will be increases in electricity rates — our rates, I think, are inappropriately low — so let's expect that, but let's look at keeping the emphasis on the customer's bill. The way to keep the customer's bill low is to give them energy services instead of electricity supply.

Those are the four tools — not the only ones, but the four key tools — for regulating access to the grid.

The second aspect of regulation is providing a regulatory process which is open and accountable and accessible. We all expect that function to be met by the Ontario Energy Board, but I think we need to see some real definition given to the role of the energy board more than we see in the Ontario Energy Board Act, as seen in schedule 2. We need to see more definition to the kind of notice given to the public, to the kind of access provided to the public, particularly from northern Ontario, where we're heavily impacted by differences in rates and by generation and future potential generation schemes. We're heavily affected by these projects, very directly affected, but it's very difficult for us to access the regulatory process if it's in an office tower at Yonge and Eglinton and we have only very standard or minimal notice to participate in that process. We, as an organization with some history, have difficulty accessing those processes, and I think other organizations — ratepayers' groups, citizens' groups — would face even greater barriers at this point in time.

That's the first component: regulation.

The second, and this is closely related, is full-cost accounting. This perhaps is another part of those same tools for regulating access. I think there has to be full-cost accounting implemented in full, and that means that we have to know the full and long-term costs of electricity sources — of energy sources. Although I'm speaking mostly in terms of electricity, it's not out of indifference to the gas sector or that part of the energy sector. It's simply because we have, by our history, focused more on electricity. But we have to have full-cost accounting. We have to know the cost in the long term and the full term and in the environmental context and in the community context.

The third is a greater emphasis on energy services. That was mentioned in our comments on tools for regulating access, but there has to be a much greater emphasis on energy services, through the municipal utilities, through the provincial structuring and so on.

The fourth is that there needs to be a mechanism for regional demand-supply planning. We shouldn't be looking at the province as a single entity in terms of how we do energy planning and electricity delivery. We should be looking at it regionally and we should be looking for a no-net export or import on a regional basis.

Fifth, we need to have improved environmental assessment. That certainly applies to new generation and it absolutely applies to water power generation. We have a very weak regime for assessing water power projects in this province. It's not caught under the Environmental Assessment Act unless it's designated by the minister

specifically, and that has proven difficult to achieve. There was some years ago a brief discussion, supported by the water power association, to have a class environmental assessment on water power. That went nowhere. At present the regulatory or the assessment regime is the water power assessment process managed by the Ministry of Natural Resources, and it has not been effective, it has not been able to do the job that's needed. We need to have an assessment process for generation which is much expanded from what we see at present.

Sixth, we have to see a nuclear strategy. Within this I would include both a strategy to retire the debt, to manage the waste and decommissioning, and to phase out the reactors. If we are really going into a regime where decisions are made based on fiscal accountability and/or environmental responsibility, that will happen itself, but I think there has to be some intentionality about it. If a restructured or reorganized energy or electricity sector is to operate effectively, that has to be done with a great deal of thought at the outset.

Seventh, there have to be environmental standards, performance standards built in to all the licensing and all the decisions to give access to the grid. There are performance standards mentioned in the bill, but I think that needs to be supplemented. It needs to be clearly spelled out that those are performance standards which relate to environmental performance and that there are strict codes of environmental performance and environmental standards which have to be met.

Those are our seven items which we consider to be essential. I think it would behoove this committee and all legislators to take those seven tests and view the four pieces of legislation here, particularly the Electricity Act and the Ontario Energy Board, through those lenses, through the lenses of those seven tests.

The third item I wanted to cover, and I will do it very briefly to allow some time for discussion with the committee, is to touch on a few areas within the bill that particularly need some attention. There are too many of them to give adequate discussion, but I'll try and identify a few of the key ones.

The very first, at the front end of schedule A, the Electricity Act, within the purposes section, and this is a problem we see again in the Ontario Energy Board Act, we get down to 1(g) before we see any recognition of or referral to our environmental responsibilities. In (g) we hear that a purpose is "to facilitate energy efficiency and the use of cleaner, more environmentally benign" — I don't know what energy sources are environmentally benign — "energy sources in a manner consistent with the policies of the government of Ontario." That's perhaps fine as a (g), but what I think we need to see in an (a) is a very clear statement of the environmental standards that need to be met and a commitment by this government, a commitment by the resulting entities that are going to be active in the electricity sector, to energy and environmental responsibility.

1350

I brought along one of the documents put out by Ontario Hydro just this year. It states on the cover, "Ontario Hydro's mission is to be a leader in energy efficiency and sustainable development and to provide its customers with safe and reliable energy services at competitive prices." I've not been a real booster of Ontario Hydro over the last decade. Perhaps that's why I'm alarmed to see that Ontario Hydro's document looks better than the purposes set out in this act. At minimum, surely we could meet Ontario Hydro's commitment to sustainability and environmental responsibility. So the first point is that the purposes of the act have to be improved and they have to state a clear commitment to sustainability and environmental responsibility and place an environmental imperative in the act at its front end.

I think there needs to be a distinction made between generation facilities at commercial and household levels. In the renewable energy sector there is a lot of generation and an increasing amount of generation being done in the household sector, but in a few places in the bill there are points where the lack of distinction between commercial generation and household generation could be problematic, in the definitions of both the Electricity Act and the Ontario Energy Board Act in particular.

Referring back to the point I made about access to a process, in section 30 of the Electricity Act we have a discussion of the IMO. It's noted that, "The IMO shall publish the market rules in accordance with the market rules and shall make the market rules available for public inspection during normal business hours at the offices of the IMO." I draw this to your attention not because I think every resident of northern Ontario is going to have a burning desire to read those market rules but because I think it's an example of the kind of exclusion and lack of access that we see repeatedly, and that's one example of it in this bill. It's simply not acceptable to say that you can go and inspect it in an office tower in Toronto. That doesn't serve any purpose for most of the residents of northern Ontario.

There are also some difficulties with the time lines we see within the IMO in publishing the market rules, just having market rules published 22 days in advance and then you have 21 days to file an application. That to me just seems impractical and something that will lead to more confusion and less certainty or clarity of the process.

Within the section on emergency plans, section 37, it's certainly positive that there is emergency planning included in the act, but it requires a lot more definition. There should also be included in here decommissioning and closure plans for all generation and transmission facilities, particularly for generation facilities. That's absolutely got to happen for the nuclear facilities, but for the other facilities as well, and this is perhaps a reasonable section to include it in.

We have in here a note. In section 79 there's some discussion of dealing with the stranded debt. It says that generators will pay the charge for the stranded debt, paying off the stranded assets or debt for mostly the nuclear

facilities. Charging the generators for that is perhaps not the best way to go, particularly if that's going to build in a penalty against new generators which are going to be providing the grid and the people of Ontario with more environmentally responsible forms of electricity. It just doesn't make sense and it isn't fair to charge them with the nuclear debt. I think the nuclear debt has to be left with Ontario Hydro specifically or its successor, Genco, and/or charged as a surcharge on a kilowatt rate basis to all consumers of electricity. It doesn't make sense in our view to charge it out to producers who are perhaps going to be using renewable and much less damaging sources of electricity.

When we come to the Ontario Energy Board Act, schedule B, we would make the same comments where environment is last again. It comes under section 1, paragraph 6, of "General" and I would just make the same comments as we made at the opening of our discussions, of our walk-through of the bill.

In general on the Ontario Energy Board and from the electricity sector, there are a few things that are absent that should be built in. Cogeneration is absent. There should be some incentive, some reference to cogeneration to facilitate its having a place in the grid. That is less likely to happen without specific reference or some specific incentive.

Just in a general way, we have to acknowledge that we're not starting from a blank slate. We have a capacity which is badly skewed towards fossil and nukes, and while the nukes might phase themselves out, we need to again look for some incentives to make sure that the renewables, which have been badly served by the last 40 years of Ontario Hydro's operations, are given a better place.

Perhaps a purpose that should be built into the Ontario Energy Board Act is to provide energy services at the lowest cost to the ratepayers and society as a whole. Building that purpose into the Ontario Energy Board Act — and there is not a purposes section at the beginning of the Ontario Energy Board Act — would give the board some better direction and better clarification of its role and the emphasis it should place.

I'll leave it at that simply for the sake of saving at least a few moments.

The Vice-Chair: You have two minutes left. You might as well use it speaking because there's not enough time for questions.

Ms Lloyd: OK, very good. Within the Ontario Energy Board, again I would say that there should be notice requirements set out clearly for the board's proceedings.

Under licence application — this is discussed in section 65 — I think the environmental implications and the review process should meet the same requirements and should be roughly equivalent to the environmental assessment process. It should look at need, rationale, alternatives to generation projects.

Thank you. I apologize for going over time. I think that when you build four bills into one act, maybe you need more than half an hour.

The Vice-Chair: Yours was a very good presentation. You had a lot of stuff to cover. Thank you very much.

I'd like to call upon Great Lakes Power Inc, please.

Mrs Johns: Mr Chair, just as a clarification as we're changing people here, in section 79, because this is enabling legislation, what we have is options in (4) and (5) which would allow either for the surcharge on generation or CTC. I just wanted to draw that to the attention of the woman who just spoke. So it's (4) or (5) in section 79, because it's enabling legislation.

Mr Lessard: It doesn't say "or."

Mrs Johns: I know, but we had to list all of our options that we were able to take, so we listed the options. It doesn't mean we will be taking both. We could and I take your correction on that.

1400

GREAT LAKES POWER

The Vice-Chair: Great Lakes Power has half an hour. For the purposes of Hansard, would you please identify yourself and your associates.

Mr Ed Kress: Good afternoon, ladies and gentlemen. My name is Ed Kress. I'm the president and CEO of Great Lakes Power Inc. Mike McEwen is our VP of operations. Harry Goldgut is our vice-president of planning.

On behalf of Great Lakes Power, I'd like to thank you for the opportunity of making this presentation to you today.

Great Lakes is the largest independent power producer and distributor in Ontario. Its principal operations are headquartered in Sault Ste Marie and encompass 12 hydroelectric plants on four river systems in the Algoma district of northern Ontario. They have a generating capacity of 312 megawatts. We also own 1,450 miles of transmission and distribution lines. Great Lakes has supplied electric power to the people of northern Ontario for over 80 years through this fully integrated electricity generation, transmission and distribution system.

Great Lakes also operates and has ownership interests in the Lake Superior Power and Valerie Falls Power projects in northern Ontario, Pontiac Power in Quebec and Louisiana Hydro-Electric Power in the southern United States. These operations include four hydroelectric generating stations and one natural-gas-fired cogeneration plant. The combined generating capacity of Great Lakes's power plants is just over 650 megawatts.

Our principal shareholder is EdperBrascan Corp, which has a long history in the electric power business and whose affiliates are among the major power consumers in this province. The group employs over 50,000 people worldwide, two thirds of whom work in Canada. It has chosen to headquarter its operations in Ontario and is committed to being globally competitive. Competitive power costs are an important element in achieving this objective.

We understand the reasons for changing how electricity is regulated and sold, and support the move to greater competition in this industry. It is happening in other juris-

ditions in North America and it is integral to safeguarding Ontario's competitive position in the global economy. However, we feel that it is essential that these changes proceed fairly and that they not penalize those who have long-standing investments in the industry and who have provided reliable, competitively priced power to their customers.

Although there are a number of issues concerning the electricity industry restructuring, my presentation today will deal with our views on the proposed provisions of Bill 35 dealing with charges that may be levied in order to service and retire a portion of Ontario Hydro's debt. This is a major issue for Great Lakes and its 43,000 customers in Sault Ste Marie and the Algoma district.

Our position on this issue is based on the unique status of Great Lakes Power. I will demonstrate this uniqueness of Great Lakes regarding its history, customers, employees, community relationships and performance.

The development of hydroelectric power in Sault Ste Marie dates back to the late 1800s. It formed the base of an industrial complex built there by Francis Clergue and it has powered the development of the mines, mills and towns throughout the district of Algoma.

In a referendum held in Sault Ste Marie in January 1928, residents and industrial customers decided that Great Lakes Power would be its principal electricity supplier rather than the provincially owned Hydro-Electric Power Commission, which of course was the predecessor of Ontario Hydro. Unique in the province of Ontario, Great Lakes continues to provide competitively priced power to the city of Sault Ste Marie and the surrounding region under the terms of its franchise.

As occurred in 1928, Great Lakes has once again reached a crossroads, as the government of Ontario moves to make another important change in the provincial electricity markets.

Great Lakes currently sells power directly to industrial, commercial and rural customers in its service area and indirectly to residential customers in the city of Sault Ste Marie via the city's public utility commission. Algoma Steel, St Marys Paper, GP Flakeboard and North Superior Forest Products are our four largest industrial customers. Our operations in northern Ontario generate approximately 75% of our power requirements from our own hydroelectric stations and we purchase the balance that we require from Ontario Hydro.

For many years, we have managed to keep our rates 12% to 17% below those charged elsewhere in the province and neighbouring states, in effect maintaining a separate power market from the rest of Ontario. This represents savings of approximately \$250 million for our customers over the past 20 years, through good times and bad. We stood by two of our major industrial customers in the early 1990s when they encountered significant financial challenges. We continued to provide them with electric power in order to assist them through their respective restructurings, knowing that we would incur significant losses. This was a case where good business sense and good community sense converged. The way we

approached these situations demonstrates the special and unique relationships we have with our customers.

As you can see, we have shared a close interest with our customers in providing them with competitively priced power. We have increased our power rates only once during the past six years.

During the past 20 years, we have invested over \$350 million in upgrading and expanding our generating and transmission facilities in northern Ontario. Our investments in these projects have resulted in new jobs, economic spinoffs and other benefits in the communities we serve in northern Ontario.

We have also devoted a great deal of attention to achieving productivity improvements and high levels of reliability. We are recognized internationally as a leader in safe work management and consistently rank in the top 10% of North American utilities. Our safety record is five times better than the Canadian average. Productivity is two to three times better than most other Canadian utilities based on kilowatt hours produced per employee. We are leaders in risk-based preventive maintenance, which has enabled us to achieve unit availability of 99% versus 92% for the average Canadian electric utility.

Our work management programs incorporate best practices from our other businesses and today we are leaders, particularly in the distribution business, resulting in a much higher level of productivity among our linemen. We are proud of our accomplishments. Our people were highly commended for their commitment and outstanding performance in helping to restore power to several Quebec communities following the devastating ice storm in January of this year.

Since the 1928 referendum, Great Lakes Power has operated outside the Ontario Hydro market and supplied its customers with electricity at rates below comparable rates charged by Ontario Hydro.

The uniqueness of our status goes beyond our performance. It relates fundamentally to our customers having opted out of the Ontario Hydro market and reaffirming their separateness from it over the years, most recently in extending our franchise to the year 2008.

Our operations have always been distinct from Ontario Hydro. It has made its own investment and management decisions and we have made ours. Since 1928 we have made our own way, often through difficult and challenging times. In so doing, we knew that if we had overruns or incurred extra costs, we were on our own. It was clear to us that the province's other electricity generators and their industrial, farm and residential customers would not pay for our debts.

Yet Bill 35 envisions the possibility that Great Lakes Power and our customers could be compelled to help pay for part of Ontario Hydro's debt, specifically the investments and extra costs incurred by Ontario Hydro and financed by debt which will not be serviceable by the new generating, transmission and services companies to be created by the proposed legislation.

1410

Great Lakes Power and its customers were not party to Ontario Hydro's investment and management decisions. Accordingly, we believe it would be unfair for us and our customers to bear any responsibility for repaying debt incurred by Hydro in deciding how it would operate.

As you know, subsections 79(4) and (5) of the proposed Electricity Act, 1998, give the government broad powers to impose a competition transition charge on generators and consumers of electricity in Ontario to service and pay down a portion of Ontario Hydro's debt. Section 80 provides, among other things, that the Lieutenant Governor in Council may make a variety of different regulations, including exempting persons or classes of persons from subsections 79(4) and (5). It is clear, therefore, that the drafters of the proposed legislation foresaw the very real possibility and the need for there to be exemptions from these charges for persons and classes of persons such as Great Lakes and its customers.

In the absence of specific language to the contrary in the legislation, our view is that Great Lakes and its customers could be subject to the stranded debt charges. Therefore, we respectfully request, given our unique history and the quality, reliability and long-standing service provided to our customers in this province, that Bill 35 be amended to specifically exclude Great Lakes and its customers from the competition transition charges contemplated by section 79 or any other stranded debt charges. In the alternative, the committee should, at a minimum, recommend a regulation pursuant to 80(1)(k) that Great Lakes and its customers be exempt from these charges. To impose such charges on Great Lakes or its customers would significantly diminish the value of the enterprise and relationships we have diligently built with our customers over the past 80 years.

While we do not know the quantum of the proposed competition transition charge, an earlier estimate by Dominion Bond Rating Service in a report dated April 29, 1998, indicated that a charge of 1.6 cents per kilowatt hour could be required. The imposition of such a charge on Great Lakes Power's system could result in a loss of approximately \$350 million in value, equivalent to our investment over the previous 20 years. Being an investor-owned enterprise operating in Ontario, we submit that we should be entitled to the protection of long-standing ownership rights.

Furthermore, the levying of the competition transition charge on Great Lakes and our customers could unfairly increase their costs of operation. This would be contrary to the spirit of Bill 35 and the need to encourage investment in this industry in order to increase efficiencies to enable power rates to become competitive. The objective should be to reward success and avoid penalizing those who apply the best work practices and technologies to achieve lower costs.

We have attempted in Appendix A of this presentation to suggest proposed language to deal with the exemption. However, we would welcome the opportunity to

participate in the process of drafting acceptable amending language.

We believe that if the electricity industry restructuring initiatives are implemented fairly over time, the result should be more jobs for more people as industrial growth is facilitated and new, more productive investments are made in the electric power industry.

We commend all those striving to find the right answers in deregulating the electric power industry in Ontario. We recognize that there is no simple model to guarantee success. However, we draw great comfort from the consultative processes put in place and the credentials of the people who have given a considerable amount of their time to achieve the desired objectives. We are confident that with your input they will succeed, but in the process it is essential not to discourage those who have operated diligently in the industry without subsidy or government support. Given the fair treatment we are seeking, Great Lakes is confident that it will increase its investment to secure long-term, competitively priced power for industry and the residents of Ontario.

Thank you once again for the opportunity to appear before you today. The three of us are now prepared to take your questions.

The Vice-Chair: Thank you, Mr Kress. We have four minutes apiece, and we'll start with the rotation finished from this morning, starting with Mr Baird and Mrs Johns.

Mr John R. Baird (Nepean): I'll go quickly because I know my colleague Mrs Johns has a question as well. I think you make a good argument that you haven't participated in the debt, so why should you have to pay it? But in your own presentation you say you've received 25% of your hydro from Ontario Hydro. Would you not be responsible for at least that?

Mr Kress: I think our position is that we only got intertwined with Ontario Hydro in 1960 and that as a proportion of the overall market we're approximately 1% of terawatt-hour sales in the province, so we're a very small factor.

As I said in my words, we didn't expect anybody to help us if we made mistakes on our investment decisions. I guess the other thing is, if Ontario Hydro or its successor company exports to the United States or Quebec or wherever, do we expect those people to pay the CTC charge?

Mr Baird: I guess the concern I would have is, if you make one exception, what would I say to the new manufacturing plant coming into my constituency in Nepean which is going to wholly export all of its products when they arrive and say: "We're just setting up shop here in Ontario. We didn't participate in any of this debt"? Should we make an exception for them? Does that not get into a really slippery slope?

I'm a young person. I didn't vote for any of these governments who allowed Hydro to go into debt. Should I get an exemption too?

Mr Kress: As I said, it is indeed a complicated issue. I think we're saying that on new generation we're prepared. We'll have our heads up so that if there's a CTC charge

we're prepared to bear that on generation from new plants. But to go backwards is almost like an expropriation.

Mr Baird: As Mr Conway says, help me. What do I say to this new manufacturing facility in Nepean which says: "John, I want the same deal that Great Lakes Power has. They weren't responsible. Why should I be?"

Mr Kress: Because you're brand new and Great Lakes has been here for 80 years. We preceded Hydro. We built the plants before Hydro came on the scene.

Mrs Johns: Obviously, we're going to have to consider this. This is a pretty big issue and we want to have a chat about that.

I want to have you answer two questions at the same time. First of all, who supplies the default power if something happens?

I'm going to formulate my second question also. You've charged less per kilowatt hour or whatever it might be than Ontario Hydro does at this particular point. One would assume that's because of efficiencies you've brought in or something that you do substantially different from Ontario Hydro.

Given that Hydro is entering this new and competitive market, could you see Ontario Hydro being able to reduce its prices to get to a level where they may be able to be as competitive as you and therefore be able to pass those savings on to the consumer?

Mr Kress: If I can deal with the second one first, and Mike may elaborate on this, what we have done in our own system is we have applied technology; we have applied work management systems. We get a great deal of co-operation from our union members and we have a great relationship with the union. That has allowed us to keep our costs under control.

I think that in certain instances that would work for Hydro. What I would suggest is that part of the benefit of that could be used to relieve the stranded debt problem.

1420

Mr Conway: I've got two questions just to follow up, and I think Mr Baird and Mrs Johns strike at perhaps a bit of the soft underbelly of what is a very compelling argument, because there's an equity issue here. I understand entirely. And you remind us, as did CNP this morning, that the Ontario Hydro monopoly is not exclusive. There are pockets. There are duchies in Algoma and Fort Erie, and there was a for a while even in my part of the world. I guess there still is around Cornwall, sort of.

But what about the fact that you tell us that since 1960 there has been an interconnect and that at least for the last 38 years, some portion, maybe 25% of your power, give or take a bit, has come in from the big Ontario grid? If that didn't exist, then I think you'd have us in a very, very tight corner, but I think that if in the last 38 years 25% of your power, give or take, has come from the Ontario Hydro grid, it seems to me that exposes you to some residual obligation there.

Mr Kress: The contract expert is Harry. He's a lawyer.

Mr Conway: I've got a question for Harry in a minute, a different question, and I've only got four minutes.

Mr Kress: All right, Harry, be brief.

Mr Harry Goldgut: To try to respond, when the interconnection was made with Ontario Hydro in 1960, I think you have to look at it in a commercial sense. We had two similar businesses, one with power to sell and one with an interest in buying that power, Great Lakes being the latter, of course. That commercial arrangement has worked very well for both parties over the years. Since the time of that interconnect, Great Lakes has indeed expanded its generating capacity in its service area by building four plants to reduce purchases.

But I think you have to look at it again commercially, as opposed to coming back to Mrs Johns's comment on default supply, where two interconnected utilities in a similar fashion to Hydro-Québec being connected with Ontario Hydro or Michigan and what have you are doing business with each other under commercially acceptable arrangements, to some extent.

Mr Conway: All right, Harry. We'll obviously have to look at it. You make a compelling argument, but it seems to me that we're going to have to be very careful about the equity of the retirement of this debt obligation.

Now, Harry, since this bill was introduced a couple of months ago and since the Legislature broke in late June, you and your colleagues on the Market Design Committee gave us a very good read in the second report of the MDC, tabled on June 30. I was very impressed by this report and I'm very troubled, quite frankly, by the pungency and the clarity of your position around market power.

Do I read this report correctly when I conclude that it appears to be the view of the MDC that we have not helped the process of competition by excluding divestiture beyond the Genco we're left with as a result of the white paper proposal? Would that be a fair conclusion?

Mr Goldgut: I'm going to respond very briefly, and hopefully not to disappoint you, by suggesting that the question may be better put to the chair of the Market Design Committee when they make their presentation, only because I'm not equipped to deal with that question.

Mr Conway: I thought Ron Irwin was the only diplomat to be coming out of northern Ontario, but I see he's got a brother.

The Vice-Chair: We move to the next caucus. Mr Lessard.

Mr Lessard: Of course, the issue of charges that may be imposed on generators or on consumers for the stranded debt is dependent upon what the amount of that stranded debt may be. We've had suggestions — I heard from a lawyer yesterday in Thunder Bay that maybe there isn't any stranded debt to some estimates that go up to as much as \$30 billion or more.

I am interested in your opinion as to whether you think there is any stranded debt; second, if you do, who do you think is in the best position to determine what it is?

Mr Kress: Let me answer that. We are obviously waiting for the department of finance and the professional experts to come out with their initial determinations of those figures, and we will react to that. Certainly, earlier this year — and this is based on a very limited knowledge

of costs of nuclear recovery and decommissioning. But just based on a general sense of what is the basic marginal cost of new generation today, all in, with a proper return on equity — that figure is based on gas-fired, combined-cycle generation — it's about five cents a kilowatt hour. That is what should drive what the price of power is in this province.

I think at our annual meeting earlier this year I had expressed some doubt that there was any stranded debt, but I said that was based on a limited knowledge of all the facts, and let's let the experts come out with their calculations.

Mr Lessard: I guess if we assume that there is some stranded debt, my next concern is, how are we going to pay for it? We've heard from yourself and from someone this morning as well saying, "We're in a unique situation so we should get an exemption." I'm wondering now how many people, how many corporations, might be in a situation like yourself, who say they're unique and might be asking for an exemption. Do we have any idea?

Mr Kress: Ignoring all the NUG contracts, which are almost a separate issue, I think the independent power producers would be 2% of all the terawatt hour sales in the province, so not big.

Mr Goldgut: And you may find that there are different shades of uniqueness.

Ms Martel: I'm sure we will.

The Vice-Chair: You have one minute.

Mr Michael McEwen: Around reliability, that issue, we have a win-win, which is a nice contract to have, with Ontario Hydro that provides for us to keep a very reliable transmission system that can back up Ontario Hydro's east-west tie, as well as Ontario Hydro providing for features that we enjoy as well. It is really a commercial contract that has two players in it that both have reliability contributions to improve the reliability in the Algoma district as a sum, basically.

The Vice-Chair: Thank you very much, gentlemen.

WILLIAM BRADLEY

The Vice-Chair: I would like to call on William Bradley as the next presentation. You have 30 minutes, and I hope there's time at the end for questions.

Mr William Bradley: Actually, I would like to be reminded at 10 to —

The Vice-Chair: After you've spoken for 20 minutes, I'll give you the signal.

Mr Bradley: Exactly.

The Vice-Chair: OK. You asked, you get it.

Mr Bradley: My name is William P. Bradley and I've been an environmental writer for about 20 years, mostly covering environmental technology and renewables. I am a member of Northwatch and associated with the Canadian Uranium Alliance.

Basically, I'm not going to be talking about uranium, because that's not my field. Philip, if he was here, would be speaking to that. My interest is on the renewables side. In fact, 20 years ago, in 1978, I participated in the hear-

ings concerning the Eldorado nuclear refinery here in Sudbury as a member of the Sudbury Association for the Environment. At those hearings, my role was strictly in speaking to the aspect of renewables.

I haven't had a lot of notice with respect to making a presentation and I apologize for not having a printed transcript, but I do have a number of items that I wouldn't mind discussing with you. My focus today is not necessarily on discussing various policy options but sensing what I do on a day-to-day basis, and that is my role in writing about environmental technology in society as a whole for various media organizations, to give you a sense of what is going on in the minds of certain members of the media and society as a whole.

1430

I would like to read from a couple of scripts I aired for a very prominent public broadcaster this spring. I did a series on environmental technology. The first one, which is probably one of the most unusual energy technologies of them all, is actually on wind energy. Just to read from that script, the host asked me:

"Bill, conventional energy sources may have their problems. In the preamble, I noted that energy has been in the news a lot this year with ice storms, there's been conflicts with the Labrador Innu arising out of the new Churchill Falls project, and public concern has certainly derailed the option of burying nuclear waste in northern Ontario. Mainstream energy sources are showing vulnerabilities. But what are the alternatives?"

That's what I was addressing in that radio clip.

My comeback is: "I feel, through my investigation — and I used the Internet and Web sites as much as I could — basically, they've come a long way."

"First, let's consider renewable energy technologies such as wind as part of the environmental technology sector as a whole. Currently, 123,000 Canadians work in this new growth sector. According to the Canadian Environmental Industry Association, these businesses generated annual sales of \$16 billion last year, 2.2% of Canada's GDP."

My comeback is: "I know. I've been following the environmental technology sector for 10 years, but to be honest, like most people, I was quite skeptical about wind energy making much contribution either to the energy grid or the economy."

The host asked me, "What changed your opinion?"

"Four events. First, last summer I surfed the Internet and punched 'wind' into my browser and came up with the American Wind Energy Association. They follow the global wind energy technology sector. Their report of the amount of electricity today generated by wind alone stunned me. We're talking about 8,000 megawatts, a megawatt being one million watts, which equals twice the amount of electricity to be generated by the proposed Churchill Falls II project in Labrador. And remember, Churchill Falls II will be the biggest new hydroelectric project in North America."

The announcer asked, "Where is wind energy developing?"

My answer: "Germany leads, with 2,000 megawatts installed today. But even more startling is the economic impact that wind energy is having on national economies. Take Denmark, for instance, a country of five million people. Denmark manufactures 75% of the world's wind turbines; 8,600 Danes are employed in this sector. In fact, wind energy manufacturing is their second leading export, after agriculture.

"Now, the reason they are jumping on wind is that wind energy is growing eight times as fast as conventional energy sources — 24% per year versus 3% or less for conventional energy sources, according to Washington's World Watch Institute."

"What else have you found out, Bill?" asked my host. "What's happening here in Canada and North America?"

Then I get into a discussion of one company, Advanced Thermodynamics in Sault Ste Marie.

"They have a joint project with the Batchawana First Nations band, and when I talked to the individual involved, he was discussing a contract they had in southwest Alberta about installing Canada's largest wind turbine, a one-megawatt tower."

I actually have a photo of the kind of technology we're beginning to talk about here. That's a 600-kilowatt turbine, which is now standing and generating electricity in southwest Alberta.

Then that was followed up by the particular media organization I was working for. They invited that particular company into their studio in Sault Ste Marie. He announced on air that in fact they had a contract with the Peigan Indian reserve in southwest Alberta to build 100 towers in southwest Alberta.

That's just a few extracts about wind. The most interesting aspect about that first item was that we got a great deal of public response after that item. We got seven people calling in, faxing, e-mailing for more information, because I always add a resource list. For instance, they ran a psychologist for six months and he only got six responses in all.

Then I went on to some other environmental technologies. I went on to solar, for instance. When I do an item I try and look at the global situation as well as the local. I hooked bases through the Internet with Dr Andrew Blakers, an Australian from the Australian National University. He's working now to cut by 50% the cost of silicon cells through a new manufacturing process which is coming out of the lab and should be commercialized within three years.

My host asked me: "What else is going on? These guys are just coming out of the lab. Are we here yet in terms of solar energy being practical?"

"Actually, I'd say there are other factors to consider. First, large-scale and widespread commercialization must occur, and government must take the lead in breaking down policy barriers to solar energy. Third, the public has to show consumer demand. Now, there has been movement on these fronts globally and locally. For example, last year the Greek government and Enron, the world's second-largest solar cell manufacturer, announced the

construction of Earth's largest solar power station — 50 megawatts — on the island of Crete. By the year 2003 the station will provide electricity for 100,000 residents, one eighth of the population of Crete."

I talked about the US. "President Clinton has announced the million solar rooftops program. By 2010 approximately 70,000 jobs could be created in solarizing one million US buildings. Already plans have been announced to install 500,000 systems via nine utilities, states and non-governmental organizations."

My announcer asked why.

"Basically, export potential — Enron is a US company — jobs and the economic savings in reducing their energy reliance on foreign energy suppliers such as Canada."

"What is our government doing?"

"Basically they're still in the demonstration stage, but some provincial utilities in Alberta and Quebec have been reported to" — again, I mentioned the wind farms in Alberta and there's another major one in Quebec.

My view is that what's happening through this series is that the public has shown a great deal of interest in renewable energy technology. There is the private sector involved. Just through a perusal of the various phone books in northeastern Ontario, there are four renewable energy retailers in Sudbury, there are renewable energy retailers in North Bay, in Timmins, in Sault Ste Marie right on the ground now. People are buying the systems. Business is booming.

I think that what you have to look at is some of the recommendations and policy recommendations by organizations such as IPPSO, the Independent Power Producers' Society of Ontario. There are some similar recommendations made by the uranium council as well, basically talking about having a minimum content for the generation of electricity by renewables, allowing consumers to have the ability to choose, making sure they have the ability to assess where that energy they are purchasing is coming through in terms of labelling. These organizations mention many examples and many states in the United States.

I am a freelance writer. I'm following up on that story. My producers, my editors and whatever media think this is a growing story. They're interested in it because they think the public is interested. Sooner or later other people in the media are going to start asking you questions about why you're not pursuing a more aggressive stance towards this industrial sector, which obviously generates jobs, helps to diversify our local and regional economies and even has export potential.

That's all I have to say. Just a word of advice: Pay attention to this sector or watch out for the microphones.

1440

The Vice-Chair: Fine. You've surprised me. We have about six minutes apiece, beginning with Mr Phillips.

Mr Phillips: The bill we're dealing with, Bill 35, does get into this issue of renewable power. Have you had an opportunity to look at the bill in terms of whether in your opinion it is going to be supportive of building the industry?

Mr Bradley: Because of a lack of notice, I haven't been able to take much of a look at it. I was putting together a radio show which aired at noon today. My advice is perhaps to pay attention to those individuals. I think you should not just look at IPPSO and the other organizations, but also make sure you're touching base with the renewable energy industries associations such as Canwea, the Canadian Wind Energy Association, such as the Solar Energy Society of Canada, which is based in Montreal. These people have Web sites. I'm not sure if they're part of the proceedings, but I do hope they people are able to give that industry perspective, because it's the industry that has the numbers on the potential in terms of job creation, what specifically they need to break down the barriers.

All I'm saying is that as a freelance person in the media I think there's a story right here and that's why I'm covering it, and I'm getting support from the mainstream media as a whole.

Mr Phillips: Well, you'll be able to cover yourself today.

One of the provisions in the bill I believe will encourage one's electrical bill to indicate the source of the energy. In other words, if I as a consumer would like to be using solar energy, I would be aware of that. I'd also be aware of the cost of that. In other words, I'm prepared to pay X cents more or X dollars more.

In your experience, is the public prepared to support the environment by perhaps paying some kind of premium for their power?

Mr Bradley: Actually, that has been the case in the United States in some states. If you went to the DOE Web site or got your researchers to, they've done surveys in Texas and other jurisdictions where people have been prepared to pay a premium.

The other aspect which people are concerned about, and they tell this to me, is that they would like to install renewable energy technology but they'd like to sell it back into the system to get a payback. It's called net metering. I'm sure IPPSO would be able to make a better presentation on that. That's just out there, in talking to the members of the public at large. On my lake — I'm in an off-the-grid situation — out of 23 buildings there are already five solarized. We have systems ranging from \$100. My system is \$300; it's a used system. It goes from \$1,500 to \$3,500 to \$5,000. People are prepared to pay, and they're not just running on solar; they also have it in conjunction with propane appliances as well. They're prepared to pay, but it would be nice, if they are hooked into the grid, if they get a net metering situation where they can get a payback. It should help offset that barrier of renewables, for instance, the higher capital cost. In my case, I got set up for \$300 with used equipment, but not everyone has the connections to find out who's got used equipment. So some people are concerned about that.

Mr Phillips: With your knowledge of the technology, what is the premium that one may be looking at to —

Mr Bradley: In the United States, in the material I looked at, they're looking at 10% to 15%.

Mr Phillips: That's 10% to 15% over the —

Mr Bradley: That's right. If you gave me the time to come back to you with some of the detailed information, I could come back to you in a week or so.

Mr Lessard: Feel free to take the time to provide us with further information, because you can do that in writing for the next week or so at least.

I've had an opportunity to go to California and tour the wind farms they have set up near Palm Springs, and it's quite impressive. People who ran that said to me that in the new deregulated California market, they think wind-generated power is almost competitive; you do have to pay a premium if you want to get your power from the wind farm.

Part of the reason they were able to make it close to being competitive is because when the wind farm got set up after the Arab oil embargo, a lot of people jumped into the market and they've lost all their investment because the market went bust after that. A lot of that hardware has been paid for, and that's why it is more economic. We're not going to go down that road here in Ontario, and ultimately I think it's going to be an industry that develops based on economics or some incentives or regulation being provided by the government.

The government says this legislation actually gives people a choice as to where they want to buy power. If they want to buy renewable energy or green energy, now it gives them that choice. You've said that some people are going to be prepared to pay a premium for that. That may be the case, but I believe there needs to be more than just that faith that some members of the public may be prepared to pay more for renewable or green energy and there need to be some incentives or regulation. I wanted to hear your views about that.

Mr Bradley: Certainly some of these organizations mention that there could be a need for more funding, more R&D. This is the private sector we're talking about, you know, and there's all kinds of government support for private sector companies in whatever industry we're talking about. The industry is at a fairly immature stage of development. That doesn't mean it's not generating electricity into the grid today or providing electricity on people's rooftops today, but it is an immature industry and could use some specific financial incentives. Also, the government could generate more information, support.

Mr Lessard: One of the things we've had suggested to us is that the marketers of electricity should have a certain percentage of renewable or green power as part of the energy they have to supply. It would be a regulated —

Mr Bradley: That's called a renewable portfolio standard, which I did mention and which is popular I believe in the United States and which IPPSO and the uranium council have mentioned in their Web site materials.

Mr Lessard: Are you supportive of that approach?

Mr Bradley: Yes, I think there should be a minimum. That's a way to help support the industry. But I believe you have to investigate it thoroughly in terms of where it's been utilized in jurisdictions before. The advantage sometimes of coming in a little later in the game is that you get

to see what mistakes they've made or you can fine-tune the situation.

Mr Lessard: One of the things you'd mentioned as well is the net metering — is that what you call it? — an opportunity for people who are generating their own power either by solar or by wind to sell back to the energy supplier as one incentive of doing that. Do you think that's something we should put in the bill, those sorts of incentive mechanisms?

Mr Bradley: I think you should pay attention to that discussion as it's being enunciated, because that's what people are telling me. In my area, it's kind of a high-income area, and many people are well educated and are concerned about the environment and are interested in environmental technology. They see it on their TVs and have thought about implementing it, but they would like to see some sort of payback, which is what net metering is all about. For a more technical discussion, you have to talk to IPPSO and the other organizations.

Mr Lessard: I'd like to get into the technical aspects, but we're in the policy-making aspect. We want to try and encourage people to do this.

Mr Bradley: Exactly. Well, the technical aspects in terms of policy formation.

1450

Mr Galt: Congratulations on your enthusiasm for renewable energy, particularly wind and solar power. For the legislation that we're bringing in the regulations are not written as yet, but we described it as enabling legislation to write the regulations addressing some of the concerns you have. I'd like to bring to your attention the present status, where there's really no way to get green energy — you're referring to wind power, solar power — on to that grid unless it's a demonstration project by Ontario Hydro. The other awkward position we find ourselves currently in is that if Ontario Hydro is short of power, there's no limit on where they can go out and buy it, so they can go to the Ohio Valley, for example, where there are some pretty dirty coal plants, and import so-called dirty power from the US. Would you agree that moving ahead to Bill 35, which we're working on, is better than the status quo?

Mr Bradley: Some organizations are talking about having fossil fuel caps, since we all acknowledge that the burning of fossil fuels generates pollution and can affect global warming. Again, the public is getting quite concerned about ice storms, heat waves etc. These organizations are making that point, so that's one way of limiting Ontario Hydro's ability to generate more than it should from fossil fuels.

Mr Galt: It's interesting to note the record of Ontario Hydro. Of all the plants in the northeast, the organizations that produce hydro, many of them much smaller than Ontario Hydro come in second in total emissions of SO₂, CO₂ and the nitrous oxides. From the total emissions going out, they're in quite a good position.

Just looking at some of the environmental regulations, we're looking at everything from citing environmental performance standards of those who import or want to

import into Ontario to emissions reduction trading, requiring revealing the emissions that come from each of these plants. It would be right on your electricity bill so you as a customer would be quite aware. But none of these have been written. They're certainly not etched in stone, and that's part of the reason to leave it in regulation, so that it can be moved a little more easily in the future. Would you be interested in being part and parcel of that consultation and contributing to it?

Mr Bradley: Certainly. Just one last little bone of contention: There is a new 85-kilowatt tower at the town of Spanish, which I visited. Although it can generate 85 kilowatts, it's only allowed, under current regulations, to generate 50. It's owned by the town of Spanish and it's actually quite aesthetic-looking, in fact stunning, because it's quite large. It should almost be considered a tourist attraction. I don't know why they don't have a sign. That's a little bone of contention I have. IPPSO has made that point a number of times.

Mr Galt: You commented earlier that you felt people would buy green power if they were aware of the standards and had that kind of choice. If they can get that in this — and this is certainly our intention — do you see this as an opportunity for new investment and jobs here in Ontario?

Mr Bradley: That's why I mentioned in my script the jobs; 8,600 jobs in Denmark out of the wind energy sector. It's a way of diversifying the economy, putting jobs in various parts of the province. We just had a presentation from a private sector company.

Mr Galt: Not to discourage you, but there are some drawbacks to wind and solar power. They use acres of either forest land or agricultural land; they have problems should there be an ice storm, if lightning strikes, if the wind doesn't blow, if the sun doesn't shine and so on.

I'm curious about your grouping of green power. Some of the hydraulic plants do block up water and have ice problems. Do you classify that as green power in your grouping?

Mr Bradley: In my perusal of what many analysts and groups are saying, it depends on how large the site is. It's probably site-specific. You'd have to do a mini environmental assessment on each project.

Mr Galt: So you don't give blanket green power to the hydraulic plants that do not create any emissions?

Mr Bradley: There's a big difference between James Bay and something much smaller. You can get right down to micro-hydro, which is probably the most efficient if you have the stream flow.

Mr Galt: The nuclear plants give off no emissions to speak of. How would you classify those? Would you consider those as green power?

Mr Bradley: If Philip was here, he would point out the connections that we don't always look at, in terms of the costs of decommissioning, the environmental costs in mining and transporting the material.

Mr Galt: You made an excellent point earlier on setting aside and looking at decommissioning costs. This has been quite a struggle for Ontario Hydro, to identify what

those real costs are, but they indicate that \$2.8 billion has been collected for decommissioning purposes. Their explanation is that it has been reinvested back into the organization. I'm hearing from you then that you're looking at nuclear very positively.

Mr Bradley: I never have looked at nuclear in a very positive way, because I've always been interested in the alternatives. I was always quite concerned about Ontario Hydro's debt and the percentage of that which was generated by having a larger nuclear capacity than we should have. Earlier down the road, if we had gotten more into energy efficiency and promoted renewables, perhaps we could be leading Germany or the Danes.

Mr Galt: There's no question that this bill will certainly be promoting that, particularly as the regs are written. It depends how effectively those regs are written. If you were to leave me your card, I'd certainly make sure the Ministry of Environment people get it and follow it up with you.

The Vice-Chair: Thank you, Mr Bradley. I think you've gotten the interest of a number of people. If you're going to send a report to Dr Galt, I'd like to get a copy of it too. We would see that it's shared with the committee.

At this time I'd like to call upon the Wahnapiatae First Nation, Carolyn Pettifer and Peter Re collet.

Mrs Johns: A point of clarification, just before they come up: We were asked about access. That's section 25 of the act, so Mr Penna, as he's preparing that brief, should look at section 25 of schedule A. Section 87 is the regulations that allow for environmental issues in schedule B. I just wanted him to know those.

WAHNAPITAE FIRST NATION

The Vice-Chair: Good afternoon. Please identify yourselves for the sake of Hansard, to begin with.

Ms Carolyn Pettifer: I'm Carolyn Pettifer of Wahnapiatae First Nation, a part of the Anishnabek Nation.

Mr Dwayne Nachkewe: Bonjour. I'm Dwayne Nachkewe. I work for the Union of Ontario Indians. We're an affiliate with Wahnapiatae First Nation.

Carolyn has asked me to begin, to give, if you will, a national perspective on behalf of the Anishnabek Nation, on the changes taking place within Ontario Hydro. I should mention that the Union of Ontario Indians represents 43 Ojibway, Pottawatomi and Odawa first nations surrounding the Great Lakes of Ontario, stretching from roughly Sarnia up to Thunder Bay.

The relationship between Ontario Hydro and Ontario's first nations was born by accident, a necessity based upon circumstance. Many of the generating stations in northern Ontario are situated on or very near traditional territories.

The aboriginal perspective on the changes to Ontario Hydro outlines three key areas and describes historical grievances which have shaped the opinions for change tomorrow.

The planning, development and operation of generating stations in Ontario has occurred with little or no regard to first nation peoples or the impact on first nation territories.

The impacts on our people have been twofold: as a people expected to bear the environmental costs associated with hydro development and as a people who have been traditionally excluded from deriving any degree of economic benefit from these very same projects.

1500

Projects such as the White Dog generating station and the Caribou Falls generating station contributed in the most negative way possible. Combined, these projects flooded a total of 1,100 acres of the One Man Lake First Nation. The flooding forced the relocation of an entire community. Perhaps even more tragic was the flooding of the community cemetery, which caused exposure of family gravesites and resulted in coffins floating to the surface and washing up on the newly created shoreline. Finally, the effects of artificially fluctuating water levels led to the destruction of the annual wild rice harvest, costing the community \$200,000 to \$300,000 per year in lost rice sales, one of the few industries in remote northern Ontario for first nations.

Construction of a hydro station on the Nipigon River in the mid-1920s contributed to the first changes in water flows experienced by the Red Rock First Nation. These changes were magnified substantially by the construction of a much larger facility at Virgin Falls at the outlet of Lake Nipigon several years later. Combined with the replacement of the Virgin Falls generating station with the much larger Pine Portage generating station in 1950, this provided Hydro with a much greater capacity to fluctuate flows and alter water levels in the Nipigon River.

Flooding of reserve lands and the erosion of shorelines and the community cemetery led directly to a loss of livelihood and reduced ability to utilize the community land base in the manner to which the people of Sandpoint First Nation were accustomed. Sandpoint First Nation was abandoned quietly in the mid-1940s, making compensation for this particular case difficult as many of the community members have taken residence in communities throughout northern Ontario. Compounding this problem further was the seizing of the community's land base by the province and its eventual conversion to a provincial park in 1950.

Overcoming the experience and history of the Ontario Hydro and first nations relationship is critical if the corporation is to secure the support of first nation communities while restructuring. To this end, Ontario Hydro has at its disposal alternatives to take meaningful and long-lasting mitigative measures to ensure that first nations derive a share of the economic benefit from the continued operation of these facilities on their traditional lands.

Recommendations:

The liability incurred from Ontario Hydro operations must reside with the crown. Where communities have levelled claims against specific operating stations, ownership of these stations should reside with the crown until such claims are settled.

The first nations' key interest is the securing of the first right of refusal to purchase facilities located on traditional land use areas. Communities for the first time would be

integral participants in the power generation industry, benefiting economically and having a vested interest in what has traditionally been viewed by communities as a competitive interest for this particular resource.

Ontario should develop as part of its criteria a means to weigh the involvement and support of aboriginal communities for these proposals. By encouraging joint venture partnerships, Ontario Hydro ensures the coexistence of privately owned stations in the north with aboriginal communities.

The commitment to purchase power from existing stations must be maintained, otherwise any discussion related to the privatization of Ontario Hydro and the divestiture of its assets is pointless.

Transmission: The incidence of Ontario Hydro's transmission and distribution lines and their location on first nation lands forming the basis for conflict between the two occurs far more frequently than most would recognize. In many cases, Ontario Hydro remains satisfied that their legal status on first nation territory is unquestionable.

Staggered by the number of grievances first nations were attempting to address through the impact assessment phase and worried that the completion of the assessment would be stalled while dealing with these grievances, Ontario Hydro agreed to establish a past grievance process that would take historical claims against the utility outside the environmental process. What they found during the implementation of the past grievance phase gave them cause to question for the first time the legitimacy of their occupation of first nation territory.

In most instances the conflict between Ontario Hydro and first nations is based primarily in the self-serving and disparaging attitudes Ontario Hydro adopted with aboriginal communities in the 1950s. Further aggravating first nation governments is the refusal of Ontario Hydro to acknowledge their past practices as profoundly unfair. They remain satisfied that they obeyed the laws of the day despite how such practices are regarded today.

Ontario Hydro and first nations must jointly develop a right-of-way access plan. This plan would provide terms of reference for continued tenureship of first nations' territory and provide a means to resolve existing tenure-ship and land use issues.

Ontario Hydro must commit to the non-use of herbicides designed to suppress plant growth on first nations' territory. As an alternative, Ontario Hydro should examine the viability of undertaking these activities using manual tending.

Ontario Hydro must continue to study the linkages between high-voltage transmission lines and the occurrence of cancer for people living near those lines.

Operations: In addition to the organizational and structural problems facing the utility and first nations, a relationship between the degree of service provided to communities and the development of their respective economies has become apparent. In remote and off-grid communities, the absence of Ontario Hydro services has become apparent.

From a daily operational perspective, Ontario Hydro has made ridiculous demands on the aboriginal communities it serves. It has held hostage a community's membership while attempting to extort a ransom for unpaid accounts from the first nations themselves. The situation works thus: In a number of instances, individuals from a wide range of communities have defaulted on their individual hydro accounts. Ontario Hydro in turn has pursued the first nation for payment of the individual's account, oftentimes refusing service to new residents until the first nation has paid the previous account. Furthermore, Ontario Hydro has demanded substantial deposits from new account holders if service is being requested on reserve.

Ontario Hydro must ensure a basic principle and right for the provision of electricity to every household and business in Ontario confirmed by a restructured utility. Proposed municipal electrical utilities, especially those based in regions such as northern Ontario, must continue to distribute electricity with an obligation to serve, making it mandatory to provide service irrespective of community location, remoteness or other factors municipal electrical utilities might regard as unprofitable.

In addition, municipal electrical utilities as an alternative to Ontario Hydro must abandon the policy of holding first nation communities responsible for individual accounts. This policy is not found anywhere else in Ontario and should not be implemented against first nations because of their susceptibility to these practices.

With that, I'll turn it over to Carolyn, who will provide a perspective from Wahnapiatae.

Ms Pettifer: I'd like to introduce our chief, Ted Roque, from Wahnapiatae.

I brought a visual so that you can see where our reserve is located. Sudbury is down here. Lake Wahnapiatae is this. It's 11 miles by nine miles this way. The reserve is right here, two miles by two miles. It's a very small reserve.

We've had hydro in there just in the last five years, but we're at limited capacity of 30 hookups. That's just 30 homes. There's no more capacity for businesses and for new residents who are in the process of building homes. We also don't have any Bell Telephone lines into the reserve. We have very limited infrastructure, being located as close as we are to the city of Sudbury. It's only 60 kilometres north.

This whole area, if you look at the activities around the lake, there's a lot of mining happening, a lot of resources being taken out of the area. We're in the process right now of negotiating with the province an interim measures process that takes in 10 townships in and around the area.

When the reserve was surveyed as part of the Robinson-Huron Treaty of 1850, the survey was incorrect. The reserve should in fact be at least 16 times the size it is. When the Indians signed the treaty, there's the north Wahnapiatae River that goes up to the hunting area, up in this area, and in the summer months our people would go down the south Wahnapiatae River to Lake Huron to do their fishing. It was a traditional travelling area for our people.

When we signed the treaty in 1850, there was a problem in terms of the notion of measure that was understood by the Indians and what was written in the treaty. That's why the survey was wrong. The reserve itself was not surveyed for 30 years after the signing of that treaty, and when the surveyors came in to survey the reserve, they went in on their own without consulting with our first nations people as to the location of the reserve and the size of the reserve. We are in the process right now of a claim to reclarify our boundaries, so that's why we're entering into an interim process in terms of this whole area until our settlement is concluded.

1510

On the south Wahnapiatae River, going down here, Ontario Hydro built a dam in the 1930s. Actually, some other utility company built the dam prior to that and Ontario Hydro took it over in the 1930s. But what has happened because of the building of that dam is this whole orange area in here, a large area of erosion. The shoreline was eroded quite a way back in front of the reserve and in this area. This here is a provincial park in this area. This part was deregulated for the purposes of mineral exploration last year, and this area up here was included as part of the provincial park.

When this area was flooded, a lot of our burial grounds located in this area were washed into the lake. From the 1930s, I believe, you can even see articles in the Sudbury Star where there were skeletons found in the lake. We're very concerned about the impact of Ontario Hydro on our traditional territory and our whole reserve area. Whatever the bill does in terms of breaking up Ontario Hydro, we're very concerned about who is going to take accountability and responsibility for the past damages that were done in our area. The river that goes up north, the inlet used to be right down in this corner. Now it's way back in here and the whole area is flooded.

I guess that's about it. We will be meeting with Ontario Hydro for the first time to look at what kinds of arrangements we can make in terms of the compensation for lost lands and flooding. Back 20 years ago, we did enter into a lease arrangement for a small part of the eroded area. It didn't cover the whole area that was flooded. They only took into consideration 100 feet of waterfront at that time. Those kinds of things need to be reopened and renegotiated with Ontario Hydro.

Chief Ed Roque: I just wanted to mention too, because of the lack of hydro within our community and the members who are living there now, some of them lived there this winter without hydro, just living with generators, and we need to negotiate with Hydro. A cost of possibly \$1 million is what we're looking at to bring in hydro; that's what we had been quoted at one time. I know we are currently waiting for a new price to come in, but even with that, the safety there without the phones or the hydro is a real concern for the membership — as well as infrastructure, economic development. We have missed out on a few opportunities to date for getting into manufacturing with co-ventureships with other businesses. We have been approached, but we don't have the infrastructure there.

We want to be able to function on our own, but we need these infrastructures there to do this, the phone lines and the hydro. That's one of the other reasons we're here too, to make you aware that we want the infrastructure within our community, to move on and to grow.

The Acting Chair (Mr Doug Galt): Anything else that anyone wanted to present on? OK, thank you very much. We have approximately four minutes for each caucus to ask questions.

Ms Martel: Thank you very much to all of you for coming. The agreement ends — I think in 1999 you have to start renegotiating with Hydro with respect to not only the 100 feet but any additional claim you want to make. At this point has there been any kind of discussion whatsoever with Hydro as to who will assume some responsibility, who you will be negotiating with? Will there actually be a branch still in place to do that with? Have you had any connection to Hydro at all at this point?

Ms Pettifer: No. Our first meeting with them will be next week, and it's just an initial meeting to make them aware that we want to enter into a negotiation process with them.

Ms Martel: I'm not sure, Dwayne, if you might be the better one, or Carolyn. How many other first nations might be in this situation, either having some form of compensation from Hydro now or having a claim before Hydro for past damages incurred on traditional land? Any idea?

Mr Nachkewe: There are about 134 first nations in Ontario, about 100 in northern Ontario. I would say virtually every one of them would have a past, present or future claim. Most of these generating stations happened in territories immediately adjacent to or in the traditional hunting or fishing territories of first nations. That's a guess. I couldn't give you a specific number, but within our organization we have roughly 30 communities that are north of Lake Nipissing and the French River, and virtually all of them have had Hydro claims.

Ms Martel: When you talked about the past grievance process that Hydro has put in place, that would be where first nations — I don't want to use the word "applied" — were actually starting to make Hydro aware of the fact that they intended to put in a claim?

Mr Nachkewe: Yes. Some of our communities have had successful negotiations with Hydro, and I think they found that Hydro's attitude has come a long way in dealing with the communities. That being said, there are a number outstanding.

Ms Martel: How many first nations within the area dealt with by the Union of Ontario Indians might not have hydro now?

Mr Nachkewe: Wahnapiatae — we have two that I know of right now. Our communities are fortunate because most of them are located along the TransCanada Highway. At the same time, I don't think any of you would characterize Wahnapiatae as a remote community; 40 minutes north of Sudbury doesn't seem very remote to me. It's mostly the communities north of these treaty areas, like Nishnawbe-Aski Nation and Grand Council

Treaty 3 in the west, that would be more adversely affected.

There is a more pressing issue too, and it's going to require some co-operation from both levels of government, federal and provincial, and that's the fact that the Indian Affairs budget is frozen, and they pay the cost for this hydro. If hydro costs increase significantly, it's going to cut into other much-needed parts of band budgets.

Ms Martel: So that we're clear about where you're coming from, there's certainly an issue about extension of hydro services, and I recognize that for NAN and Treaty 3 that would be a much more pressing issue, just given the locations of the first nations. Many of them just fly in. People would say it might be difficult to get to Wahnapitae, but in terms of some of the others that we're talking about, they're so remote that that's a real problem. But really your concern is that with respect to Bill 35 — we all know there are going to be some enormous changes with Hydro and we're not clear about what the structure might be in terms of what Hydro will look like at the end. You want to be very sure that someone at Hydro or the crown will continue to deal with legitimate grievances and continue to ensure that compensation is paid where it is due?

Mr Nachkewe: I think that's fair. We are also concerned with the fact that these changes coming down are going to have direct impacts on our communities and negotiations within our communities, and chiefs and community members have not been at all satisfied with the level of consultation on the change.

1520

Mrs Johns: Thank you very much for your presentation. I wanted to tell you I was informed a great deal by it.

Ms Martel and I had a discussion prior to your arrival just about what was happening here. She was quite concerned that Bill 35 would in some way affect what little, it would appear after your presentation, you have now. We've tried to work out a couple of things. I then took the opportunity to call Ontario Hydro up to talk to me because we have of course a team of Ontario Hydro experts who seem to be following us around the countryside.

I wanted to confirm with you, if you can confirm, what they're saying. They're saying that there's a new realm of openness with the reserves and that they're trying to deal with them. In fact, they're telling me that this weekend Ron Osborne is visiting — I'm going to get this name really mixed up; I'm sorry — Ginoogaming First Nation in northwestern Ontario and celebrating with the first nations the signing of a treaty with respect to some of the issues you raised today.

Do you believe that to be true or do you have any comments on that? Basically, I think what they're trying to prove is that they're starting to try and deal with these grievances and they're trying to put this under their belt and work forward to get some of this stuff settled. Do you notice any of that kind of openness and movement forward to try and do something about these long-standing agreements?

Ms Pettifer: Is there anybody here from Ontario Hydro?

Mrs Johns: Oh tons, tons.

Ms Pettifer: We're meeting with them next week, so — our agreement was negotiated 20 years ago and it is up next year. It was a small lease agreement. They haven't approached our reserve since that time. We did the first call to them, not only because we were concerned about the new agreement but because we're concerned about the past grievances. I understand that corporate policy to deal with aboriginal people came about quite a number of years ago, and there has been, to our knowledge, no undertaking on the part of Ontario Hydro to look at our grievances. We are talking about a lot of flooded areas as well as lost cemeteries and graveyards.

Mrs Johns: Let me ask you how the meeting next week came about, then.

Ms Pettifer: It was at our invitation to —

Mrs Johns: To Hydro to come in to speak. OK.

I just want to confirm things. Ontario Hydro says there are negotiations on a number of historic grievances. They're saying there are between eight and 12, and that there are maybe 30 communities that have approached Ontario Hydro to talk about problems or issues. Dwayne — I'm sorry I don't know your last name — I think I heard you say 100. Have I got incorrect information or is that just a lot? Is 30 correct?

Mr Nachkewe: I probably can't give you a really accurate number but what I was referring to is that communities that have been affected by hydro generation probably number 100. Like I said, virtually every first nation in northern Ontario has a generating station within their traditional area. That doesn't mean they're actively involved in processes, but I know of a number that have settled with Hydro, a number that have grievances outstanding. As to your question about whether Hydro has a new openness, I think there is, but the onus is still squarely placed on the shoulders of the first nations. If they're not motivated to address the claim situation, if they don't have the capacity to address it, they have to wait.

Mrs Johns: We certainly aren't trying to eliminate something in the act that exists now. If you see any of those kinds of issues — I know it's hard to read these bills — we'd certainly be happy to hear from you again.

Mr Phillips: Thank you, Chief and the rest, for being here. For advice to us on Bill 35, you indicated at the outset some suggestions for ensuring that the liability rests with the crown. I think that was one of your recommendations. Have you had a chance to review Bill 35 and do you see in the bill any risks that Hydro or entities you hold accountable — that you may not be able to hold them accountable if this bill is passed?

Mr Nachkewe: I thank Carolyn for getting me a copy of the bill on Monday this week. I called for it last week and it would have taken Publications Ontario probably three or four days to get it to me.

Our communities aren't even aware that the standing committee is moving around. I wasn't aware until Carolyn called me last week, and she wasn't aware until her MPP

told her about it. So I can't really fairly and honestly answer that question.

Mr Phillips: Let me just say that it would be helpful for the committee, once you've had an opportunity to review the bill, if you think that there's some risk that by passing the bill previous obligations will not be as accountable as they should have been, that you let us know that as quickly as possible.

Mr Nachkew: I understand we have until August 20 to get further submissions in and then after that the door's closed. Is that right?

Mr Phillips: I don't think we've determined when the amendments have to be in yet, if I'm not mistaken. Have we?

Mrs Johns: We go to clause-by-clause September 28, but we have to have amendments in prior to that, but we would like to have it as soon as possible so we can work on it.

Mr Phillips: That's the next step for us, I think. We've heard today about what may be some significant liabilities on behalf of Ontario Hydro with your nation.

Have you had a chance to discuss whether the bill will be helpful to improving service of the community, Chief? We've heard conflicting evidence on it. I think you've got a very legitimate major concern about services to your people. Have you had a chance to discuss with Hydro or with the local municipal electrical systems whether the bill will be helpful or harmful in terms of improving service to your community?

Chief Roque: I haven't had a chance to talk to anyone about that yet because we've just learned recently ourselves. I guess the concern is because we're dealing with Hydro too and with opening our renegotiations. We've worked with them in the past, but right now it's our traditional lands, our burial grounds. Our concern right now is that we want them to be aware that these are still negotiable before this bill is passed or whatever.

Mr Phillips: I don't know of anybody, at least from our party and I think probably from all parties, who would not support changing the bill if it allowed legitimate obligations not to be met because this bill changes the legal entity. I would ask you to take a good look at it and give us your advice as soon as you possibly can.

The Acting Chair: Thank you very much. We appreciate your presentation. Getting into the north we get very different information than we do in presentations in Toronto. Thank you very much for coming out, even though you just found out about it very recently.

Mr Lessard: I notice that the parliamentary assistant just stepped out. We wanted to ask a question of clarification that she may be able to cover now or —

The Acting Chair: She's coming back. I'll call on the Sault Ste Marie Public Utilities Commission to come forward while you're getting that clarification.

Ms Martel: To the parliamentary assistant, it might be helpful if the committee could get some clarification about whether the issue that this first nation and others would raise around liability is something that the ministry wants to consider under section 108, which deals with the

transition section. It certainly talks about liability and the ability of assets and liabilities to be transferred to any number of agencies.

The issue for us would be, does liability include present grievances and ones that have yet to be dealt with? There may be a simple way, if we could get some guarantee that that's what liability includes for the purposes of this act, that you could easily resolve some of the first nations concerns about what will happen under this process.

Mrs Johns: We will put something in writing to you, but I would like to say first off that all assets and liabilities have to be moved to one of Genco, Servco or the Financial Corp and we are very specific about what can be moved to Financial Corp in the act. It would appear, from my reading of the act, and I will get you a legal opinion, that all assets and liabilities have to move to Genco, Servco or IMO, of course — I suppose there are a few assets but not very many — so the liabilities would have to follow and go to one of those places. There is no place in the act that imagines an asset or a liability staying nowhere, if you will. That would mean that all of them should be moved, but I will get you something in writing that gives you a better feel than that.

Mr Lessard: The question is whether the situation that has been raised, a grievance with respect to potential claims for flooding of land, is included in the liabilities.

Mrs Johns: When I talked about liabilities I meant contingent liabilities also.

1530

SAULT STE MARIE PUBLIC UTILITIES COMMISSION

The Vice-Chair: Mr Wallenius? You have half an hour. Identify yourself for Hansard, please, before you begin.

Mr Ken Wallenius: My name Ken Wallenius and I am the general manager of the Sault Ste Marie Public Utilities Commission. I would like to thank the committee for giving the commission this opportunity to speak to you regarding Bill 35, the Energy Competition Act.

The public utilities commission wishes to address the following issues which result from Bill 35 and which impact on our operation. These issues are as follows: (1) the renewal of electrical supply contracts; (2) the Ontario Hydro stranded debt; (3) a board of directors versus elected commissioners; (4) distribution above 50 kV; and (5) electric and water utility combined function.

General overview: Sault Ste Marie is a northern Ontario community with a population of approximately 81,000 people. The Sault Ste Marie Public Utilities Commission is responsible for electric and water supply to the citizens of this city. The electric utility services 31,785 customers while the water utility services 24,922 customers. The commission operates each utility with the revenue received from metered electricity and water consumption.

The rates charged for these essential services are among the lowest in the province.

The public utilities commission was established by city council in 1917. It is currently made up of six elected commissioners, one from each ward in the city, and one councillor to represent the mayor. Commissioners are responsible for representing not only the voters in their respective wards but also the best interests of all utility customers throughout the city. Commissioners are committed to supplying customers with low-cost electricity and water, high-quality product and superior customer service.

The commission purchases electricity from Great Lakes Power, a privately owned company with hydroelectric generating stations located throughout the Algoma district. Great Lakes Power has provided the public utilities commission and its customers with reliable electrical supply and service over the last 70 years and at rates that are 15% to 20% below rates charged by Ontario Hydro to other comparable municipal utilities. Commission demands have been met by Great Lakes Power through its continued development of environmentally responsible hydroelectric facilities. Great Lakes Power has been good for our community and we would look forward to their continued support in providing our customers with low-cost, reliable electrical supply.

Renewal of electrical supply contracts: The original contract for supply of electricity to the PUC by Great Lakes Power dates back to 1928 and has been amended and renewed over the years to provide our customers with low-cost electrical supply. The current contract expires on December 31, 1998, and is under review for renewal. Our customers would recognize advantage in extending the terms and conditions of the present agreement for at least a five-year period. The proposed legislation indicates that existing contracts between utilities and their supplier may be terminated or transferred to the new companies established under the Business Corporations Act. The commission requests that the committee recognize the agreements that we have in place with Great Lakes Power and ensure that they continue to the benefit of our electricity customers. Great Lakes Power is prepared to continue their offer of low prices and it is the commission's desire to enter a longer-term contract with GLP that would benefit our customers.

Ontario Hydro stranded debt: The stranded debt issue refers to investments made by Ontario Hydro and financed by debt which will not be serviceable by the new generating, transmission and services companies to be created by Bill 35. Since the Sault Ste Marie Public Utilities Commission is not and has never been a customer of Ontario Hydro, we think the Public Utilities Commission should not be obligated to pay any portion of the stranded debt.

Our unique status goes beyond not being an Ontario Hydro customer. For most of this century, our energy needs have been met by a privately owned utility that has met the needs of its customers by building generating capacity and financing these investments through the rates

it charges. Accordingly, we believe that the Sault Ste Marie PUC should not bear any responsibility for repaying debt incurred by Hydro in deciding how it would meet its customers' needs.

Board of directors versus elected commissioners: The proposed act identifies the municipality as the owner of the electric utility and requires the establishment of the utility as a company under the OBCA with the municipality as a 100% shareholder. The company will be governed by a board of directors elected by the shareholder, which in this case is the municipality.

The new board of directors must be accountable to the electricity customer and must be responsive to customer concerns. There is a need for customers to have a significant voice in matters that affect an essential service for them, provision of electricity. To ensure this voice, electricity customers must be given the opportunity to elect members to the board who will represent customers' interests. Currently, customers have strong representation through their elected commissioners and the new governance should ensure that this representation continues.

Distribution above 50 kV: The PUC takes power from Great Lakes Power at 115,000 volts to supply two transformer stations which are owned and operated by the Sault Ste Marie PUC. Power is transformed from the 115,000 kV to 33,000 kV at the transformer stations and distributed to various distribution substations within the system, where it is stepped down to the 12,470 distribution voltage.

The proposed legislation identifies 50,000 volts as the division between distribution and transmission. Under this criterion, our 115 kV system would be classed as transmission facilities. However, our 115 kV lines are radial supplies with the sole purpose of supplying the Sault Ste Marie utility. There is no transmission of electricity over these lines to supply other than the Sault Ste Marie PUC customers. The higher voltage allows a more efficient operation of the distribution system and improves service to our customers. Accordingly, it is our position that the 115,000-volt power lines be recognized as part of the distribution system and be factored in appropriately in any future cost analysis.

Electric and water utility combined function: The proposed legislation supports the formation of a new electric company that can form affiliated companies or in other ways associate with other businesses. Under our present structure in Sault Ste Marie, electric and water utilities operate as a combined utility to the benefit of our customers. Significant cost-efficiencies are realized with the shared utilization of staff and resource facilities. It is important for the new legislation not only to accept what has proven to be a successful operating structure, but also to encourage the sharing of resources to improve efficiencies. In the final analysis, it is the customer who benefits in receiving the essential services of electricity and water in a most cost-efficient manner. Customers receive high-quality and reliable electricity and water supply now and can rightfully expect this to continue under the new legislation.

In closing, I would urge the committee to recognize the successes that are evident in the electric utility industry today and ensure that they are carried forward as the new industry develops. Elected commissioners give customers a significant voice in electricity matters that concern them directly. Dedicated, trained staff must be given time to adapt to the new environment so they can continue to provide superior customer service. We must continue to maintain and upgrade the electrical supply systems to provide reliable and environmentally friendly electrical energy to customers. In the final analysis, the new industry must add value for the customer and ensure reliable, low-cost electricity to meet customer needs.

The Vice-Chair: Thank you. We have six minutes apiece, beginning with Messrs Baird and Gilchrist.

1540

Mr Baird: Thank you very much for your presentation. I think the local power utilities have certainly served their customers well. If you serve the folks in Ste Sault Marie as well as the folks in Nepean serve my constituents, they've been well served.

I think you make some excellent points, as did your supplier, Great Lakes Power. It's certainly something for all of us to reflect on and to consider. Let me just commit to it. I know I and probably all of our colleagues will take the time to reflect on it and to give it some thought and not perhaps go with our first gut instinct.

I think, more than anything, the way you've operated and Great Lakes Power in its presentation earlier probably make the case for breaking up the monopoly of Ontario Hydro better than any policy person or politician at Queen's Park ever could, because you obviously, both as a utility and as a private operator, have shown that it can work outside of Ontario Hydro.

I do have a concern and it's a very tough one. When you make exceptions for some, you open the floodgates. You probably were here earlier when we heard from Great Lakes Power. We learned from their presentation that since 1960 upwards of 25% of the power has come from Ontario Hydro. Does that not merit some sense of the liability?

Mr Wallenius: I think the Great Lakes Power representatives did respond to that. But as far as the exceptions go, you say it opens the floodgates. Is it still not important, though, to understand what these exceptions are and address them? There could be some very legitimate issues that are coming up and it may be some of them are more legitimate than others. We really do believe that we have a legitimate issue, that if it is one of the exceptions, I think it's worth the consideration that you've indicated you're going to give it.

Mr Baird: That's a fair point. I don't know what I would say, for example, to my constituents in Nepean. In Bells Corners, which is a community of about 12,000 people where I live and grew up, we've been trying to tap the methane coming from the Ottawa-Carleton dump, which could actually supply the hydro needs of the 12,000 folks who live in Bells Corners and would be demonstrably better for the environment because it's going out in the

atmosphere. We've been fighting for that for years and Ontario Hydro won't let us. So because Ontario Hydro lets some people out of the grid and not others, do we get a break too? We wanted out and we've been fighting to get out; they just won't let us out.

Mr Wallenius: That's what you should be arguing then.

Mr Baird: That's what we're arguing here with this bill, I guess.

Mr Wallenius: Very good.

Mr Baird: I just want to say there are some fair points and we'll certainly reflect on it.

Mr Wallenius: Thank you for your presentation. You raise a couple of issues. Let me very quickly deal with a minor point here. Great Lakes Power in their presentation said that the community had reaffirmed their separateness over the years, most recently by extending the franchise till 2008. You mention in yours that it's up for renewal and you're looking for an extra five years. Who's got their facts straight on this?

Mr Wallenius: What we're negotiating right now is just a power supply contract to the utility. They've mentioned the franchise. I would leave that for Great Lakes to identify what the franchise is to 2008.

Mr Gilchrist: So we're talking two different contracts. Fine.

It's always interesting. Every presentation has a different wrinkle. You've raised the issue of the distribution over 50 kV and that's the first time anyone has done that.

However, you do raise another issue of board of directors versus elected commissioners. There's absolutely nothing to prevent Sault Ste Marie from having any kind of a public input process. Perhaps much like Alberta has done with their request for senators being elected from Alberta, the fact that the federal government isn't required to do that doesn't mean they wouldn't respect that that's the way Alberta puts a name forward. I would submit to you there is nothing in this bill that would prevent Sault Ste Marie from finding a different way of coming up with the six names to become the board of directors, and if they want to continue to do that by election, I'm not aware of anything that would bar this.

The final point I would ask your comment on is the electric and water utility combined function. As you're undoubtedly aware, in the bill there's nothing that prevents you from continuing to do two or more functions. All we suggest is that the accounting must be done in a very transparent way so that people can see the true cost of the electric service and the true cost of the other service. You obviously can fairly attribute even administrative expenses. Do you have a problem with that?

Mr Wallenius: Separating the costs? No, there's no problem with the separation.

Mr Gilchrist: So as long as this bill, as it does, allows you to take on other convergent technologies, any other task that you think you can compete with in the private sector, you have no problem with the bill saying that, knowing that all we're asking you to do is just fairly distribute the costs.

Mr Wallenius: I think I've noted that. It is there in the legislation and we accept that. That's good.

Mr Gilchrist: OK. I just wanted to be clear on that.

Mr Conway: Mr Gilchrist has anticipated the two areas I wanted to —

Mr Gilchrist: Mind-reading is just another skill.

Mr Conway: I think you make a very good point, Mr Gilchrist, and I just want to come back to it very quickly. Just explain if you would, Mr Wallenius, to the committee, as you understand the provisions of Bill 35, what are the governance changes that are effectively going to be imposed on you that would be different than the ones you've had over the years in setting up the commission that runs your PUC?

Mr Wallenius: As I understand it, the municipality, being the 100% shareholder, will be electing the board of directors, so it will be up to the municipality. However, they won't be representatives elected by the people. Somehow a board of directors is going to be established in some way. I think I'm being told here that there are many different ways of establishing that board so it's possible then to ensure in some way — and I don't know all the procedures that could be used, but there must be some process by which the people could elect some representation to the board so that the board is close to the people rather than being remote. That's my understanding of how it's set up.

Mr Conway: You raised a point and we'll probably want to look at it a little more carefully. But just like Mr Gilchrist, my impression is that it is a slight change but it shouldn't affect the ability of the shareholder, the municipality, to decide what that board's going to look like.

Mr Wallenius: It's a case of just wanting that assurance, because our concern is that the customers will be able to have representation on the new board. I think there's some thought that boards of directors can tend to be very remote from the population in general; they may not be representative. I think just an assurance that somehow this board is going to have elected representation.

Mr Conway: The second issue is the issue of convergence. You've got a municipal utility that runs two operations, an electric and a water utility. I guess that was going to be my question. Does the bill impose effectively the construction of any firewalls that you don't already have in place?

Mr Wallenius: No, and it's again more of an assurance that we're understanding it correctly. The combination of having the electric and the water and possibly entering into other businesses is the expectation that's coming.

Mr Conway: You see the subtext here, and it's not just a subtext. Listen, I've been around the business long enough to know that humankind can sometimes sin. I think of Kingston and St Catharines. They come to mind. Over the last 10 or 15 years I remember stories in the St Catharines Standard, and the Kingston Whig-Standard had some rich detail about the behaviour of a utilities commission going off to some exotic place and doing things. The worry is, quite frankly, that there's perhaps the

opportunity for boondoggle. The provincial Legislature never engages in that, but we have to watch you people. We have to be very vigilant that people like the Sault Ste Marie Public Utilities Commission behave themselves and don't use the convergence that this new world order is going to provide to —

Mr Baird: That's a road I wouldn't go down.

Mr Conway: Well, on Monday we're going to be in Ottawa. We're going to hear from Cornwall. In Cornwall we've got convergence now of a different kind. We're going to have a private operator, Consumers' Gas, that's going to have a gas franchise and the electric franchise. I expect more of that's going to happen. There's certainly going to be pressure for that. You've answered the question, that there is no great burden being imposed on you to separate out the two parts of the utility business that you've long operated.

Mr Wallenius: They're separated now, but it's a case of ensuring that two of them can't operate together. If you want to call it convergence or whatever, then it's to try and ensure that they can. That's economic for the customer.

Mr Lessard: I come from the Windsor area and we have a utilities commission that supplies electric power services to households as well. We'll be hearing from them next week in Sarnia. You're satisfied that you'll be able to continue, once incorporated, not only to provide electricity but to provide water to consumers in Sault Ste Marie as well after this legislation is passed?

Mr Wallenius: That would be my understanding of it, but I think it's a case of, is that the intention of the legislation too? I'm looking for feedback from the people involved that that is the intention and the interpretation of the legislation, that that will be allowed.

1550

Mr Lessard: One of the concerns that I've heard expressed is that although there may be an ability, as you understand, to offer electricity and water services together, there are some who are concerned that Servco, the Ontario Hydro competitors, may be able to offer additional services that you may not be able to offer. Is that your understanding of the legislation as well?

Mr Wallenius: I think based on what I have read on that that there could be limitations. I think this is an MEA presentation, that there are limitations on what the new company could provide, and I would be at a disadvantage if there are limitations put on the new company.

Mr Lessard: Are there some disadvantages for your municipality to provide water services through a corporation incorporated under the Ontario Business Corporations Act as opposed to under, I guess it would be, the Public Utilities Act?

Mr Wallenius: Disadvantages in doing that?

Mr Lessard: Advantages or disadvantages. They're going to be changing possibly the taxation structure.

Mr Wallenius: These are issues that I think we're just coming up to. I don't think I fully understand all of the impact at this particular stage, so I would hope at this

point, with the combination of the two, that we could still provide a competitive service.

Mr Lessard: Do you have any kind of sewer surcharge on your billing as well?

Mr Wallenius: We have the sewer surcharge that we collect for the city, yes.

Mr Lessard: You collect that for the city. That's similar to the Windsor area as well. Do you feel that you'd be able to continue to do that, or is it still premature to have an answer to that question?

Mr Wallenius: I don't know if we could or not. We do it now. Someone would still have to do it, and I believe it's sort of an economic procedure at this particular point. It's good for us to do it. Why not continue to do it?

The Vice-Chair: Thank you very much, sir.

Mrs Johns: On a point of clarification, Chair: In section 83 of the act we talk about the distribution above 50 kV, so I think you might want to look at that. It's section 83 (a) and (b) — I haven't got my glasses on here — and it talks about the feasibility of going beyond the 50,000 that you've been talking about.

INCO LTD

The Vice-Chair: I'd like to call upon John LeMay and Ron Aelick from Inco Ltd. You have 30 minutes. I hope that you'll have time left over at the end for questions. You may start whenever you'd like.

Mr John LeMay: My name is John LeMay, project manager for energy conservation for Inco's Ontario division. Unfortunately, Mr Aelick, because of his schedule, isn't able to be here with us today. I'll be about 10 or 12 minutes with the presentation and then questions. I'd like to thank the committee for the opportunity to appear before them.

Inco is a member of the Association of Major Power Consumers in Ontario, the Ontario Mining Association, and, through those organizations, the Stakeholders' Alliance for Electricity Competition and Customer Choice. We support the position of those organizations. We're also a member of the Industrial Gas Users Association and support their position.

Inco is one of the world's leading producers of nickel and an important producer of copper, precious metals and cobalt. In Ontario we have operations here in Sudbury and in Port Colborne. In Sudbury there are 10 producing mines, a concentrator, a smelter, nickel and copper refineries, a sulphuric acid plant and a sulphur dioxide liquefaction plant. In Port Colborne there's a cobalt refinery. Our Ontario operations produce about 220 million pounds of nickel annually and a similar amount of copper. We also produce significant quantities of cobalt, sulphuric acid, gold, silver, and platinum group metals.

We function in a very competitive international market. Some 95% of our nickel and half of our copper production is exported. All the products we produce are commodities that have their prices set on world markets. Our prices for our products are considerably less today than they were a year ago. Since we can't control our prices, we have to

control our costs, and electricity is one of those important costs.

In our Sudbury operations, Inco has the most modern nickel and copper smelter in the world. It also has an efficient nickel refinery that produces specialty products such as nickel powders and nickel foam. The copper refinery, while older, has recently been updated and modernized. All these facilities are capable of processing ores from around the world. For example, nickel matte from other locations has been processed. Automobile catalytic converters are processed to recover platinum group metals. Copper concentrate from other companies has been smelted and refined. Copper has been refined for others, as have gold and silver.

These are all things that add value to the provincial economy. They are, however, dependent on competitively priced energy. The smelting and refining operations are much more energy-intensive than the mining operations and account for more than 40% of electricity use and most of our natural gas use.

The Ontario division is a substantial user of energy, accounting for almost 1% of the electricity and natural gas used in the province. Natural gas is used for process and metallurgical applications, mine air heating and building heating. Electricity is used for everything from mine pumping, ventilation and hoisting to electrolytic refining and oxygen production, and we use oxygen in our high-temperature metallurgical applications.

In 1998, the division expects to spend more than \$110 million for energy: \$75 million for electric power purchased from Ontario Hydro, \$30 million for natural gas, and the remainder for oil and other fuels. I'll note that the CBC quoted the Ontario Mining Association as saying we spent \$30 million as an association; it's \$300 million. I don't know if that number was right or not when Mr McBride appeared before the committee.

In addition to the power purchased from Ontario Hydro, Inco owns and operates its own generating plants and an extensive power system consisting of 200 miles of transmission line and more than 60 high-voltage substations. This system is used to distribute power to the various mines and plants in the Sudbury area. Normally, Inco generates about 20% of its power requirements. This amount fluctuates a little bit from year to year because hydraulic generation is dependent on precipitation.

The generating plants are located on the Spanish and Vermillion rivers, 30 miles west of Copper Cliff. The Spanish River watershed extends more than 100 miles north to Biscotasing. There are 12 dams that are used to control levels on nine lakes according to a water management plan that was developed in conjunction with lake users and the Ministry of Natural Resources.

Inco's generating plants predate the formation of Ontario Hydro. The first plant went into operation in 1904. For many years, Inco was the only electricity supply to several of the towns in the area. As a result, Inco also developed an extensive electrical distribution system in the Sudbury region. This system is used to supply power to Ontario Hydro in Walden and Sudbury Hydro in

Copper Cliff. The Inco power system is capable of operating completely separate from Ontario Hydro. This has happened in the past when there has been a total power failure in the supply from Ontario Hydro.

The Sudbury operations have used natural gas since the trans-Canada pipeline was installed in the mid-1950s. Inco was one of the companies that signed a 25-year contract allowing the TCPL pipeline to be built.

Inco and its Ontario operations have had a long history of commitment to energy efficiency. Inco's Ontario division is the world's most energy-efficient nickel producer. Over the years, management initiatives have generated significant cost savings, improved productivity, and produced a positive environmental impact. The Ontario operations of Inco have improved energy performance by more than 35% since 1980 through a combination of operational and process changes. Between 1992 and 1997, energy efficiency has been improved by 13.8%.

1600

For Inco to remain competitive and continue to make a significant economic contribution to Ontario, competitive energy costs are essential.

Ontario Hydro has made some changes that have allowed the Ontario division to reduce its electric power costs somewhat. However, this does not begin to compensate for previous increases. In the four years from 1990 to 1993, rates increased by 42%. In 1994, there was no change, and in 1995 a 0.7% rate reduction.

Since that time, there has been no change in average rates, although Ontario Hydro has done a number of things that have increased costs for many companies. In 1995, Ontario Hydro introduced a rate called real-time pricing. The Ontario division used this rate to, at that time, reduce our purchase costs by about 6%. But even with this reduction, their rates are a liability, and the way they apply their rates, our rates are actually going to go up this year and they'll go up again next year. So the slight reduction we got is very rapidly being eroded.

In Inco's operations in both Thompson, Manitoba, and in Indonesia, electric power is considerably less expensive than in Ontario. In Thompson, electric power is supplied by Manitoba Hydro and rates are about 40% lower than in Ontario. In Indonesia, all power requirements are supplied from company-owned generation. Most of this is hydro generation.

As with any mining company, we have no control over the end price of our products. Increased costs cannot be passed on to our customers. In fact, for the Ontario division to remain competitive, it's necessary to reduce costs, and that includes electricity and natural gas costs.

Inco is a member of the Association of Major Power Consumers in Ontario, the Industrial Gas Users Association and the Ontario Mining Association and supports their positions. I'm not going to go through the details of the proposals, because they are all appearing before the committee. I'd rather focus on a couple of issues that are of particular concern to Inco.

Licensing: Under the requirements of the act, Inco could be required to apply for more than one licence. It

would streamline the process if multiple licence requirements could be obtained through one application. Licences should not be required for an industrial generator that uses power solely for their own requirements. Licensing should not be required for an industrial company to sell gas that is in excess of its requirements, provided such gas is not sold to an end-use residential or small-volume commercial customer.

I'd like to talk about natural gas for a minute. From listening in the audience, it almost sounds like people have lost sight that this is an energy act, and there are a number of provisions that are very important regarding natural gas.

Inco believes the provisions of the act respecting natural gas will provide the competitive environment we need.

To provide a reliable, economical gas supply to Inco's facilities, it is necessary to have both adequate transportation on TransCanada PipeLines and sufficient storage to go with this transportation. Inco has this assurance for 1999. However, beyond that time Union Gas is proposing to reduce the storage allocations.

Inco considers it necessary that the Ontario Energy Board regulate the disposition of the transportation that the local distribution companies hold on TransCanada PipeLines and the storage that is mainly located in the Union franchise in southern Ontario. A local distribution company should not be allowed to allocate either transportation or storage capacity directly to one of its affiliates. Any such disposition, other than a temporary assignment to an end-use customer, should be regulated by the Ontario Energy Board.

Electricity: On the competitive transition charge, the act provides for the government of Ontario exempting certain market participants from the obligation to pay any competitive transition charge that might be imposed in the future. Inco submits that since many of its electrical facilities predate the formation of Ontario Hydro and since its generation has not in any way contributed to any potential stranded debt, Inco's existing generating facilities be exempt from the CTC.

Mr Baird: There seems to be a pattern.

Mr LeMay: Yes, there's a pattern. You're in the north, although the member from Thunder Bay might disagree with that. I say that having been born in Port Arthur.

In conclusion, we support the intent of the Energy Competition Act to create a competitive energy environment in the province. We recommend streamlined licensing requirements, Ontario Energy Board regulation of the disposition of storage and transportation by local distribution companies, and that existing generation that hasn't contributed to the debt be exempt from the competitive transition charge. On that I'd like to clarify that I mean just the portion of our load that's our generation, not what we buy from Hydro. What we buy from Hydro should be treated the same as for anybody else.

The Vice-Chair: Thank you, sir. We have exactly six minutes apiece, beginning with Messrs Phillips and Conway, in that order.

Mr Phillips: I want to take advantage of your being here to get your advice on how you think this thing will unfold over the next few years, because the legislation will pass in a couple of months but in many respects I think we're flying a bit blind on what it will really mean.

The rates have been held down. One way Ontario Hydro has done it is to write off a lot of costs. A lot of interest costs, tree-trimming costs and things like that were written off against debt so that they could keep the rates in 1998 and 1999 frozen.

What is Inco's expectation about what will drive the reduction in costs? Ontario Hydro will keep all of its existing generating plants and will lose about 40% of the market to new generating plants. Hydro is now saying they'll sell that excess power into the US. What, in your opinion, is going to drive down the cost to Inco of power?

Mr LeMay: I think getting into a competitive environment will do it. It's the same thing that right now is driving us to do everything we can to reduce our costs. We're doing it because if we don't do it, our competitors are going to get our business. In Ontario Hydro's case the same thing is going to happen. If they get into a competitive environment, they're going to reduce their costs. I think anybody familiar with the utility can find all sorts of areas where costs can be cut if they get in a competitive environment.

Mr Phillips: Is Inco's expectation that there will be significant new generation plants come on stream?

Mr LeMay: I think there will be — this is a personal expectation — but I think it will take time. I think we're going to go through the same sort of thing we did with natural gas deregulation, and that was 10 or 12 years ago. With this act we're just really finishing gas deregulation. It's taken a long time for prices to come down. They didn't come down all at once and we went through a whole series of changes. I think the total changes from this act will probably take five to 10 years too.

Mr Phillips: Is it the right decision to not permit the sell-off of the Ontario Hydro generating plants?

Mr LeMay: I don't think whether you privatize them or don't privatize them is the issue, really. I think the issue is whether or not you get a competitive environment. The Tennessee Valley Authority is similar to Hydro, and when they didn't have any competitive environment, they were the same. It doesn't matter whether it's public or private. There are a lot of American companies that are private and that don't have competition that aren't very good examples of how to run a utility business either. You need to get the competitive environment.

1610

Mr Conway: Just a couple of quick questions. Just for your information, the brief presented yesterday to the committee in Thunder Bay by the Ontario Mining Association did on page 3 talk about "a collective electricity bill for the mining industry in Ontario at about \$300 million annually." That was the material.

John, just in layperson's language, do you want to decode that business on the bottom of page 7 under "Natural

Gas," your recommendation that the OEB "regulate the disposition of the transportation"?

Mr LeMay: To get gas to Ontario you have to get it over the Nova system and then transport it over the Trans-Canada PipeLines system. All the gas that is transported in that system, somebody holds the transportation in their name. In the case of ourselves, Union holds the transportation in their name. They also hold the storage. That transportation has a value to it, so the utilities really want to grab as much for themselves as they can grab. The act certainly provides for it. We feel that it needs to be regulated, or at least not let them grab it without our having a say in it.

Mr Conway: So it's really a regulatory matter that the OEB should be —

Mr LeMay: Yes, a regulatory matter that should be there.

Ms Martel: Thank you for coming today. You will know that you are now the third organization today that has come to talk to us about why there should be some form of an exemption. The committee takes that issue seriously because we recognize that there are significant costs involved. I guess on the other hand we're wondering how many other organizations might be able to come forward and make a similar case, either to be wholly excluded or to have part of their operations excluded, given their relationship with Hydro, and who will be left then paying what. Obviously what will be paid is still at issue as the Ministry of Finance deals with trying to make some calculations about stranded debt.

To read where you're coming from with respect to what you purchase from Hydro and what you own yourself, you'd probably be looking at about 80% of your needs coming from Hydro, and that would be the portion where you would expect the debt, whatever it is, to be applied.

Mr LeMay: Yes, that's right. I think that in the case of ourselves or Great Lakes Power, we invested the money in the generation. Hydro and the provincial taxpayers didn't invest any. As a result, any debt that Hydro has built up, we haven't contributed to that part. The 80% we buy from Hydro, if there is any stranded debt, then that 80% should carry whatever the fair portion is. I think the same thing in the case of Sault Ste Marie. Whatever they get from Great Lakes shouldn't; whatever they buy from Hydro should. I think a very clear distinction can be made between the two.

Ms Martel: You mentioned in your brief that you're expecting a rate increase next year and this. Do you have an idea what the percentage is, or have you just been told that by Hydro?

Mr LeMay: No, it's the way their rates work. Their real-time pricing rate is a very complicated one. I don't know the exact percentage, but I'd guess in the order of 1% or 1.5%.

Ms Martel: That would be for this year?

Mr LeMay: Yes.

Mr Gilchrist: Thank you, Mr LeMay. We appreciate your coming forward. You know, I'd be remiss in not starting off by saying we've always had a practice of

recognizing past MPPs when they come here. Given that he's an Inco employee, it's probably appropriate to start the protocol of introducing Mr Gerry Courtemanche, a future MPP who I'm sure will be joining us in a couple of weeks.

But seriously, on your presentation, I appreciate your supportive comments. I think as one of the largest, if not the largest, purchasers of hydro in Ontario, obviously your perspective is one that is very relevant to the bill and we appreciate your pointing out that this is a bill that covers not only electricity but natural gas.

You've raised three points and I am pleased to say that on two of the three we can set your mind at ease already. In clause 56(c), in connection with your licensing questions, there will be no requirement at all for a company like yours, as long as you're simply producing natural gas or electricity, as the case may be — but in this case, natural gas — that is for your own purposes or sold to anyone but a small consumer or a small business. So unless Inco anticipates going down the street and selling natural gas to individual homes, that's not something you will have to get a licence for.

Mr LeMay: Thank you. From our reading of the act, it wasn't totally clear.

Mr Gilchrist: That's one of the other benefits of committee hearings; hopefully the information flows two ways. Similarly, on your question on natural gas transportation and the allocations, it is probably not necessary and in fact the bill did not contemplate having the OEB involved because that's actually a federal responsibility. The National Energy Board is charged with doing exactly what you're asking for here, maintaining that.

Mr LeMay: That is one of those things where if you say the National Energy Board is charged with it, we'll fall through the cracks because the National Energy Board has no jurisdiction over the LDCs, the local distribution companies, in Ontario. They're governed by the Ontario Energy Board.

Mr Gilchrist: That's interesting because that's not the viewpoint of —

Mr LeMay: That's why we brought it up, because it's a very important point.

Mr Gilchrist: I appreciate that. If you've had any correspondence to that end, we'd be most grateful to receive that, because it's certainly our understanding that this does fall under the NEB's jurisdiction. If there is a crack somewhere that something's slipping through, it's a perfect opportunity for us to paper that over.

Mr LeMay: We have discussed this with the Ministry of Energy staff in the past.

Mr Gilchrist: We'll take it up again.

The final point: As you've heard, there certainly is in the bill the ability to apply the CTC to generation, but I think we've heard raised now, not just by three presenters here today but by others, that there may be a need to recognize the fact that there are some privately owned generation facilities and perhaps that will presuppose where the charge goes.

But in connection with that you make two points: that you're spending \$75 million this year on electricity and that in Manitoba your operations in Thompson are paying 40% less. Isn't it intriguing that is precisely the percentage of the average Hydro bill, which is going to retire the debt? Would you take it as an article of faith that whatever label we put on it, whether we call it CTCs affecting stranded debt, or whether we just call it your existing Hydro bill, that all of us have, rightly or wrongly, this obligation? Would you be comforted if, no matter what label is put to that, the amount that Inco pays in the future is not higher than that, and we hope lower, but recognize that you are paying \$30 million a year right now towards retiring the debt?

Mr LeMay: Yes, we recognize that. That's why I said I wasn't sure there would be any stranded debt when we get into the competitive market because I think rates can go down somewhat and the debt still be paid off.

Mr Gilchrist: We certainly share that expectation or we wouldn't be going through this exercise. That's been the experience in every other jurisdiction around the world that has tried it, and particularly those where they moved quickly on wholesale and retail at both ends of the spectrum to encourage competition.

Do you have any thoughts on the positions taken by the MEUs that we should have competition at the supplier level but not at the customer level? Who's going to capture any potential increased profits if that is the case?

Mr LeMay: Usually you have the middleman. In the gas business initially it was the brokers in the middle who captured the excess profit. Again, that's a personal opinion.

Mr Gilchrist: I think it's more than a personal opinion that you have. I think if you look at the Alberta example, where they deregulated wholesale but not retail, that is exactly what happened. The middleman makes more money and the consumers don't see it.

Hopefully, as one of our biggest consumers, you will benefit by opening up both ends of the spectrum as quickly as possible. Thank you again for bringing that perspective to us here today.

The Vice-Chair: Thank you very much for your presentation, Mr LeMay.

Mr LeMay: Thank you for the opportunity to appear.

1620

MUNICIPAL ELECTRIC ASSOCIATION, DISTRICT 9.

The Vice-Chair: I would now like to call on Susan Cochrane and David Wills of the Municipal Electric Association, district 9. For the benefit of Hansard, would you please identify yourselves prior to your presentation.

Ms Susan Cochrane: Good afternoon. My name is Susan Cochrane. I am the chair of the Municipal Electric Association's district 9. With me today is Henri Robillard, who is representing one of our member utilities, Capreol Hydro.

I am here today representing the municipal electric utilities of northeastern Ontario. They are located in the communities of Cache Bay, Chapleau, Capreol, Espanola, Cochrane, Iroquois Falls, Hearst, Larder Lake, Kapuskasing, Massey, Latchford, Nickel Centre, McGarry, Sault Ste Marie, North Bay, Sturgeon Falls, South River, Thessalon, Sudbury and Webbwood.

As the map attached to our written submission shows, northeastern Ontario is geographically huge. The distance between our utilities averages over 50 kilometres. We also vary considerably in size, from the cities of North Bay, Sudbury and Sault Ste Marie with populations between 60,000 and 120,000, to the villages of Latchford and South River with 1,500 people. We vary not only in size but in the range of services we provide our communities to meet their needs.

We appreciate the opportunity to comment today on the Energy Competition Act. We recall that the process of change began back in 1992 regarding an appropriate institution structure for the electricity industry. Several years of substantial rate increases had resulted in electricity prices losing competitive advantage in Ontario, a legacy of the massive debt burdens of Ontario Hydro and its poor management practices. The government of the day appointed a new chair for Ontario Hydro at that time, which resulted in massive corporate restructuring and downsizing. More important for electricity customers, including MEUs, was the five-year freeze on electricity rates. The current government continues the commitment to increasing industry competitiveness, which we all hope will result in lower consumer costs, lower costs for us all.

Our district is pleased that the legislation requires that Ontario Hydro and successor companies be regulated to ensure accountability. District 9's MEUs also applaud the common sense move to having MEUs regulated by an impartial third party, the Ontario Energy Board. We can only hope that the successor companies of Ontario Hydro respect and adhere to the OEB rules and regulations.

But the legislation contains many other changes and provisions, originating from the Macdonald commission and the white paper, about which we are not so sure. We take this opportunity to remind your committee that the legislation, market design and regulations must address the fundamental problems noted earlier — ie, the debt mainly — and not, to paraphrase, "fix what ain't broke."

We believe Bill 35 should concentrate more on addressing the market power issues of Genco and that greater separation of Servco's transmission and distribution is required.

On the distribution side, which is where MEUs fit, the legislation, in accordance with the white paper, makes a number of changes. The transformation of MEUs to OBCA corporations affords municipalities, through their utility corporations, the flexibility to provide utility services to their communities that meet the service needs of that community. Unfortunately, many northern communities will see no change in their ability to enhance services as a result of this legislation. Municipalities currently directly served by Ontario Hydro which have had services

or service levels reduced, local jobs lost and services centralized elsewhere in the province will be unable to form OBCA corporations to own their distribution systems. We request that the legislation allow municipalities currently served by Ontario Hydro to purchase the assets at the debt value currently owed.

The current accountability, through elected commissioners, is a feature preferred by this district. In lieu of that, we propose that the legislation be enhanced to require that a certain number of board members represent the ratepayers. Also, the expertise of those now serving on MEU commissions should not be lost in this process. The initial board of the new corporations should, for an interim period, include current commissioners.

The legislation says the municipality will be the shareholder of the OBCA companies. We believe electrical ratepayers are the owners of MEUs and that the role of the municipality is that of a trustee. We would therefore have preferred language in the legislation specifically addressing the rights of electricity ratepayers. However, we believe the legislation does contain adequate checks and balances to protect ratepayers, namely, through compulsory OEB reviews of share sales and controls on the percentage shares held by one owner.

Both the white paper and the legislation contain aggressive schedules to implement changes. Given time, we are confident that the combination of legislation, regulation and market design requirements can be implemented. The operative word is "time." We believe the legislation should contain more flexibility on the timing, that absolute dates should be replaced by dates set in the regulations. We believe the current time frame is simply too short. Problems in other jurisdictions show caution may be the more prudent route. We would prefer that changes be done right rather than quickly. It is the consumer who will suffer and bear the costs where there is a lack of due diligence and adequate planning.

This government's current agenda for the electrical industry calls for restructuring virtually every function and business relationship. Meanwhile, we must also focus on year 2000 readiness and compliance. Utilities of all sizes will be hard-pressed to address year 2000 issues diligently, even without the added complications of adjusting for industry restructuring.

We support the requirements in the legislation that retailers, brokers and marketers be licensed. The government has obviously learned from the disastrous natural gas experience. We recommend that the government further require, either through legislation or regulation, a comprehensive consumer education campaign prior to the introduction of retail access. We further recommend that electrical supply contracts or agreements with retailers, brokers or marketers being signed today in anticipation of a competitive marketplace be declared null and void. This will offer some protection to consumers from disreputable marketers who make misleading statements and promises.

That concludes my comments today. Again, we thank you for this opportunity to provide input to the legislative process of improving the electricity industry in Ontario.

We urge our elected representatives to remember that the final, best test of the legislation's effectiveness is in its ability to improve the services and service levels for all its constituents.

The Vice-Chair: Thank you very much. We have seven minutes, beginning with the third party.

Mr Lessard: You mention an issue that I think we have heard addressed on previous occasions, and that is with respect to municipalities currently being served by Ontario Hydro. You also mention the loss of local jobs as a result of that and an inability to form corporations to distribute electricity in those areas that Ontario Hydro serves. Can you elaborate a little bit on what you see the barriers being and what in the legislation we might be able to amend to address that?

Ms Cochrane: Our reading of the legislation as it is right now is that no new utilities can be formed to distribute power. That is the basis of our recommendation that there be some mechanism in the legislation to allow for that, because a lot of northern Ontario obviously is serviced by Ontario Hydro and there have certainly been decreases in the levels of service they're receiving, but they have no other recourse under the legislation right now.

Mr Lessard: Can you think of any reason that the legislation may be set up this way? Why is it that they would restrict the ability to establish new municipal electric utilities?

Ms Cochrane: I have no idea why it was set up that way. Sorry.

Mr Henri Robillard: Capreol is a small utility about 20 kilometres north of Sudbury. We presently are partnering with Sudbury in the telecommunications end of it, in a business. We're scheduled to start construction in September. Valley East is a municipality that is serviced by Ontario Hydro. It's between Sudbury and Capreol. Valley East looks at Capreol with envy because we have a municipal utility. They would like to have their utility expand to provide these services. What we're providing for Capreol will not come to Valley East until into the future. They wouldn't come to Capreol either, because we're that much farther out. It's the same with municipalities that are located — Marathon. If they were allowed to set up utilities to provide telecommunications services — which the legislation is going to do for us. It's allowing us to expand into these markets, but not in Valley East, so we would like that aspect of the legislation changed.

Mr Lessard: I agree with you that the current time frame is short and that we must exercise caution when we're going through this exercise and be prudent. You refer, in giving that advice to us, to problems in other jurisdictions. I wonder if you could be more specific and elaborate on problems that you may be aware of in other jurisdictions that cause you to say that.

1630

Ms Cochrane: What I was thinking of in that comment was mainly of California, I guess, which has just tried to roll out retail access. From what I've read, it's a lot more difficult and complicated than they envisioned, I think,

when they said, "January 1 everybody can decide whom they get their electricity from." That was the jurisdiction I had in mind.

Mr Lessard: I've been finding, in my exposure to these committee hearings, that it's a fairly complicated issue to deal with as well. At the end of the day, notwithstanding that complication, the government continues to assure us that rates will go down for all consumers. I don't know whether that has happened in California or not, but they say to us that's the assurance. We're asking them to put that assurance in the legislation. Do you think that would be a good idea?

Ms Cochrane: I think this whole exercise is a leap of faith for all of us. I'm certainly not trying to say we shouldn't do it. We applaud the government for introducing this legislation and certainly introducing competition, which is the main thing that will drive lower rates, if we can get more competition on the generation side, because that is the bulk of where the cost comes from. I think the whole process is good. It's just a matter of for some utilities and for some businesses the time line is a bit tight, not for all.

Mr Gilchrist: I appreciate your bringing your perspective to us here today. I guess there are a number of different points that you touch upon in your presentation. The most compelling one, though, is that the overall tone from the MEA and the MEUs seems to be that it's appropriate to call for a faster breakup of Hydro to increase competition for your suppliers, but to go slower to bring competition to your customers. I think that's a contradiction we're having a tough time wrestling with.

I'm intrigued as I look at the numbers in your own report here. We have 20 MEUs in your district here. The total population is well under the population of the old city of Scarborough. Scarborough, of course, is now part of the city of Toronto, with 2.4 million people. You would think that even before this further integration, the MEUs would be able to come before us and say, "Hydro, with all of its costs, having to get to the most remote parts of Ontario, because nobody wanted those really distant retail customers, should have the highest possible costs."

But when you look at the chart that Mr Baird keeps showing, Toronto, for both retail and commercial customers — let me give you a couple of quick examples. If you're buying 50,000 kilowatt hours per month and you're a commercial customer in Toronto, you pay \$2,789. If you buy the same thing from Hydro, it's \$2,315. Similarly, \$92.30 is the average residential bill for 1,000 kilowatt hours a month. It's \$85.50 for Hydro, almost 10% less.

We certainly are not unsympathetic to your perspective that greater competition in suppliers might be a worthy goal, but we think it has been accomplished already by simply allowing access to anyone who wants in there.

On the flip side, though, if we were to follow your suggestion and delay the implementation of greater competition, greater access for other companies to come in and bid against the PUCs, clearly we wouldn't achieve that.

Let me just give you a couple of quotes and I'll invite your comments in response.

"Each day that we delay opening the electricity marketplace to competition robs consumers and businesses of \$200 million." That came from Tim Burns, the chairman of a large consumer choice group in the United States. Divide that by 10, and \$20 million a day would be analogous here in Ontario.

We also have, I think even more compelling, a compendium of all the reports that have been done for the MEAs themselves and Ontario Hydro.

I mentioned it earlier today, but just to be fair let me draw it to your attention again: A study prepared by Adonis Yatchew for the MEA in 1996 indicated that they believed there would be savings. Another study for Ontario and the MEA, a joint study into retail electricity service in Ontario in 1994, also concluded there would be savings.

The bottom line is that all the reports, if you put them all together, show a saving of \$212 million if we move quickly to consumer and supplier competition. Is \$212 million not a worthy goal for opening up quickly the marketplace for customers?

Ms Cochrane: Where do I start?

Mr Gilchrist: Start with the end first, perhaps. Is a \$212-million saving for consumers something that —

Ms Cochrane: Nobody here is arguing against reducing costs. That is the bottom line for all of us. But I think you have to recognize that the bulk of the cost of electricity is on the generation side. It's not in the distribution. The MEUs feel that we give our customers good service. They like us. When you say that for the population of northern Ontario we have 20 MEUs —

Mr Gilchrist: No, in your district, northeastern.

Ms Cochrane: In northeastern, sorry, they were chosen locally. The local people chose to have that structure. Some of them chose not to. Timmins does not have a local utility. It was a decision made by the people.

Mr Gilchrist: Let me just touch on Timmins quickly. Another one of your points is that there's disappointment that this bill would turn off the ability for municipalities that never made that local choice. They've had 93 years to do it. Now that they see an opportunity to get in under the wire and get something at book value instead of market value, all of a sudden there's this confusion or consternation. Would you not agree with me that every time Hydro sells an asset for less than market value, you're going to increase the stranded debt?

Ms Cochrane: I don't think anybody was saying that if a new area, say Valley East, wanted to form their own utility — would they not be expected to purchase those with the part of the debt that would be —

Mr Gilchrist: No, I guess I'm asking you now, because the bill anticipates that Hydro will swap, sell, partner, do something with many of its assets, why we would not want to recognize what those assets are really worth, not the artificial price that's carried on the books. Every one of us who's been in business knows that over the years with depreciation there is a book value. That has not necessarily any point of reference with its real value, its ability to produce money. So why would we want to let

any municipality or anyone else buy something for a penny less than its true value and thereby increase the debt?

Ms Cochrane: I think they would. They would pay whatever the reasonable cost is for that asset.

Mr Gilchrist: I appreciate your candour, because that hasn't been the position taken by the MEA in other presentations, but I would applaud you for recognizing that. When we come back to the number, what should that number be? If I were the northeast group, your district here, or the northwest group, which has only 40,000 Hydro customers in all of northwestern Ontario — if Hydro says, "I want X dollars to buy it," for you to buy it from them, I'd turn around and say: "Fine. Then obviously it's appropriate that you'd sell me yours for the same dollars."

Wouldn't that be the litmus test on whether it's a fair price? If you believe that integrating all 20 of your MEUs would provide greater economies of scale, greater competition to Hydro, would you not be well advised to pay those dollars, merge your MEAs and go ahead against Hydro head to head?

The Vice-Chair: Thank you, Mr Gilchrist.

Mr Gilchrist: Couldn't we just get them to say yes or no?

The Vice-Chair: Thank you, Mr Gilchrist. Mr Phillips. If he chooses to answer the question in his next — it's up to him.

Mr Robillard: The only concern we have is that the ratepayers of the Ontario Hydro utilities have paid higher rates for ever and ever. They've retired a great portion of the debt. Now they are going to buy this system. They've retired a lot of this and now they're going to buy it for more than it's worth to them. You buy that car, pay for it for five years, it's worth \$5,000 and now he wants to sell it to me for \$10,000. Why should I pay \$10,000?

Interjection.

Mr Robillard: That's right.

Mr Gilchrist: So it should be your choice.

Mr Robillard: The people of the municipality should have the choice of buying it at book value.

Mr Gilchrist: I'd like —

The Vice-Chair: Mr Gilchrist, I've allowed the question to be answered. That's sufficient. Mr Phillips.

Mr Phillips: We hear enough from Mr Gilchrist daily, so I'd like to give the witnesses a chance to talk.

Your concern on the generation side: I just want to get some feeling from you of your concern about the legislation on the Genco side. You're suggesting here that we should be putting more focus in the bill on making some changes in the generation side. Any advice for us on that?

Mr Robillard: It seems to me that we want more openness as far as Genco goes. In Capreol we have two generators that we're in talks with. There's one in Sudbury, it's a district heating plant. These are the things that are going to provide lower rates for us. We'll have the choice to buy — we have a hydroelectric generator proposing to build a plant. We have cogen proposing to go in Capreol. They're going to provide us the choice. We can

buy from them or we can buy from Ontario Hydro as long as we have that choice in the legislation.

Mr Phillips: Your feeling is that the legislation doesn't provide the flexibility that you want?

Mr Robillard: Ontario Hydro is big. We see these rates, \$85.50, their chrome-plated rate, and it's provided to municipalities that were interested in buying the system, so they came up with this rate so that now it's not feasible. They forget to tell the rest of the municipalities that they're paying more. They are the big boys on the block, they do what they want and we're asking for them to have less power.

Mr Phillips: This is an observation on my part: One of my problems is the way Hydro reports its numbers. I have difficulty in understanding Hydro's numbers. In the 1997 annual report, I see they wrote off \$340 million of tree trimming and interest costs that were going to be incurred in 1998-99 against 1997 costs. It's just that the comparison that one of the Conservative members made on rates — it's very difficult now, with the way Hydro is reporting its numbers, to draw comparisons of their costs versus your costs. But my colleague here —

Mr Conway: I just have a question about the whole debate about the value of the asset, the book value or some other kind of value. I'm concerned about that, but I'm also concerned about a story that I heard from one of my colleagues here in northern Ontario. Mr Brown, the member for Algoma-Manitoulin, was quite upset about problems involving Ontario Hydro recently. He was saying that it was reported to him by authoritative sources very close to Ontario Hydro that a complete outage, that I think shut off the power for most of Manitoulin, was caused by some crossbar just rotting and falling down at a very inappropriate and inopportune time that took the whole system down. To the best of your knowledge, what kind of shape is the distribution system that Ontario Hydro retail has in this part of midnorthern Ontario like?

Mr Robillard: The distribution system has been let go. Our feeling is that it has been to the benefit of making them look better. I was in Killarney last weekend when this happened. We were out of power for twelve and a half hours.

Mr Conway: What? Twelve and a half hours?

Mr Robillard: Maybe it should have been out twelve and a half hours. Maybe that was a very remote location; I don't know. I don't know where it was. From what I've seen and the experience I have in valleys where the distribution system is not —

Mr Conway: But what kind of an investment is it going to take, from whatever owner, to bring it up to some kind of more acceptable standard? Presumably that's going to cost money. I'm a ratepayer and I expect that I'll have to have that taken out of my hide in rates.

Mr Robillard: The problem is — I don't really know what the investment is — once the legislation is passed, if Ontario Hydro, Servco, becomes the utility, who cares what happens?

Mr Conway: I care.

Mr Robillard: That's right. So do I. But who's going to change it? You're not going to get it back to us, to the municipal utilities, to local control.

Mr Conway: But your assessment is that much of the grid is in bad shape in this part of midnorthern Ontario?

Mr Robillard: It certainly needs work.

The Vice-Chair: Thank you very much for your presentation. We have a point of clarification, I believe.

Mrs Johns: You certainly do. I just wanted to clarify, as a result of my experience in accounting, that when an event happens, you usually accrue the cost associated with that event in the period where the event happened, so it would not be unusual to accrue the costs associated with the ice storm in the year that the ice storm happened. I would be happy to get an accounting opinion on that, if Mr Phillips feels that's an improper accounting process.

Mr Phillips: I would appreciate your getting that. Perhaps you will file that with the committee, then?

Mrs Johns: Yes. That would be great.

Mr Phillips: The increased frequency of tree trimming in the distribution system; interest costs —

Mrs Johns: Related to the ice storm.

Mr Phillips: — the replacement energy. I will look forward to that.

The Vice-Chair: I would like to call at this time the Toronto Stock Exchange, David Rudd. I don't believe he's here yet. The 15-minute cushion I've been working at building up all day has just been shot down. We'll wait until 5 o'clock. At 5:01 we will adjourn if we don't have a presenter.

The committee recessed from 1644 to 1658.

TORONTO FUTURES EXCHANGE

The Acting Chair (Mr Doug Galt): We'll reconvene the committee. It's almost 5 o'clock. The Chair will be back in just a few minutes.

I call the delegation representing the Toronto Stock Exchange. Please come forward and take a seat. Greetings.

Mr David Rudd: My name is David Rudd. I'm a member of the board of governors of the Toronto Futures Exchange and senior vice-president of Refco Futures (Canada). I'm here on behalf of the Toronto Futures Exchange to talk about their interest in establishing an electricity futures contract in Toronto.

I want to talk very briefly about the issue, first, of fiduciary and agency trading. Futures, as you may know, are an agency type of transaction where every broker acts in a very fiduciary area, a very fiduciary responsibility. They have a legal obligation to their client to do the best they can for them. I've got to contrast that with essentially principal trading where in a sense the relationship between the customer and the person who's transacting is essentially adversarial. The futures contract and the futures exchange and futures regulation are very adamant about this fiduciary, legal responsibility between broker and customer.

All the futures transactions, as you probably know, take place in a very public forum and where there is a continuous public bid and offer. There is some comfort by clients and by people who use the futures exchange that they're obviously getting the prevailing market rate to hedge their energy risk.

I have a couple of points I want to make, if I can sort of leave you with some bullet points. We do have a written presentation, but I'll digress a little bit. The first one is that I believe in the next three or four years electricity futures will be by far the largest and most active commodity futures contract in the world. After the cost of money, the next thing corporations spend most of their income on is the cost of energy. Although some of that cost will go to things like gas and oil, there's no doubt that the cost of electricity is a huge component of the Ontario economy.

One thing we want to pay attention to is the fact, for those of you who don't know, that the primary role of futures themselves, when all is said and done, is to provide stability in prices, whether it be electricity prices or anything else. It's the preferred vehicle that knowledgeable hedgers use both to determine the price in the marketplace and to lock in and hedge commodity prices or electricity prices.

We're very interested in the fact that there is a tremendous growth and interest in electricity futures. We believe, as I said, that in the next three or four years it'll be a very dominant part of our futures industry. Futures, if many of you don't know, have a credit quality that's much different than is normally perceived. Typically, futures are thought of in terms of people going bust and making millions every day. They may or may not make money, but the dynamics are that the futures contract and the futures exchanges have a credit quality that is just as high as sovereign debt. In recorded history, in the last 80 years in North America, there has never been a default on a futures exchange.

I think that's very significant, particularly when we look at what's going on recently in the United States electricity markets, in those just developing electricity markets, where we're already running into significant credit defaults.

The fact is that it is rated highly and there are structures in place to ensure that there can't be defaults or if the customer does default the broker is then liable, so the broker obviously does everything the broker can to ensure that the customer meets his obligations. But those issues really mean that the ratings agencies give futures a very high rating.

One of the unique things about futures is that they are accessible to all who wish to participate. It's not a closed shop. All one has to do is have an interest and have essentially a performance bond in place and they can participate. If they wish, they can also actually participate right down to the point of view of taking power or delivering power or delivering wheat or taking wheat, but to participate in the price action you don't have to be part of an inside club. The fact that futures can open themselves up to all participants to my mind means you get an obviously

very transparent process, but you get a very dynamic-type price, because everybody who has an opinion can participate. One of the issues in some over-the-counter markets is that that's really great, I mean it's a nice price, but nobody actually can participate. There's a club of eight, 10 or 12 people and that's the group.

In Ontario we need to ensure that the price of power is discovered in this public marketplace and discovered in a fashion that all people at the end of the day can say: "Yes, that's where the price was. I had an opportunity. If I thought it was too high, I had an opportunity to sell it. If I thought it was too low, I had an opportunity to buy it." So everybody is quite comfortable with the fact that it's the price. From a futures perspective, we can also say — there's a little phrase — we like to discover price in the marketplace rather than in the boardroom of the dominant market player.

In summary, this market transparency that I think is crucial to coming up with an exact price or the true price, the superior credit that futures have by virtue of some of the mechanics that are in place, and a public, unbiased price where all can participate to my mind make futures an ideal vehicle to hedge and price risk. We are certainly going to need a vehicle whereby corporates and users can take longer-term decisions and hedge price risk out into the future. I don't know much about public policy, but it seems to me that if you've got superior credit, transparent price and a level playing field where all can participate, I think that lines up with public policy very clearly.

The other issue we're interested in is that all the futures exchanges, whether it be NYMEX or exchanges in Europe, are looking to add more in electricity contracts. We have an exchange in Minneapolis that is about to list an electricity futures contract for power in the Minnesota area. I expect that before this market is mature we may have as many as 10 different futures contracts around America, and several of them will be on borders of Canadian provinces.

The fact that these products will be there and price, transfer and risk vehicles will be available at the doorsteps of provinces means, I think, that there is a real danger that we won't have a made-in-Ontario price and we may not benefit from the deregulation and all the effort and agony that everybody is going through to try and get a competitive market here. I really believe that this made-in-Ontario price can be of real benefit to Ontario. If we are building a better mousetrap here, we can benefit from that liquidity. We can benefit from what the futures market can bring. Let us bring as many players to the table as possible in an open, public and transparent process.

The other thing that's kind of interesting is that in a futures contract, as you know, since it's so open, prices get transmitted around the world immediately to traders in all corners of the globe and they all can participate. You don't have to be technically a buyer or seller of physical power to have an opinion on price. The one thing about futures, as I said, is that it broadcasts this information around the world. I think it can also, from a public policy viewpoint, say Ontario is open for business. If you have an

opinion on price and you want to hedge your power, if you're in Munich and you want to hedge Ontario power, here is the vehicle to do it. You don't have to be in the club.

As you may know, some time ago, the Toronto Futures Exchange sent a letter to the Market Design Committee expressing interest in pursuing and looking more closely at the concept of an electricity futures market. That happened in March, and obviously the Market Design Committee was looking at other things at the time. We have since had another conversation with them. In the meantime, a loose coalition was formed of some users, some financial interests, some non-Canadian generators; Ontario is probably the largest energy consumer. This coalition met a few times and there was unanimity in that coalition that futures would be a fantastic thing for Ontario to have, that a viable, public, transparent electricity futures contract would be a good thing. We eventually ended up calling the association the Ontario Electricity Futures Coalition, and the object of that group is really to educate, as it were, and promote the concept of electricity futures in Ontario.

They were supported in this by the IMO. Some representatives of the IMO have participated in a couple of meetings, because I think they realize quite clearly that one needs to have an instrument that is both sound from a credit viewpoint and can provide some forward price stability for those customers that want a hedge in the open marketplace. We've had some discussions about different vehicles and different possibilities, and if a futures contract were to come about, what are some of the attributes of that contract.

1710

It's our sense that in a traditional market you typically have a futures trading pit where you have, if you can imagine, 20 people or 500 people selling to each other. I have a picture of one of those pits in this little brochure, near the back. It's our view that that's a very inflexible type of approach to trade futures. Most futures exchanges are moving to an electronic mechanism where all customers have keyboards essentially, see where all the bids and offers are and trade very actively. All the exchanges are going that way. It's interesting that the Toronto Futures Exchange is quite far along that electronic road. To us, it's the ideal platform to deliver pricing both to customers and traders and to allow them to participate.

We have an interest, if this were to come about, in working somehow with the IMO to deliver as much information — I say "information" as opposed to "data" — on price, on bid, on offer, on size to the customer, whether it be a user, a producer or whoever, so they can make an informed decision.

In this little package I have here, there are a few pages that discuss — essentially it's some old slides. By the way, thank you very much for inviting us here. We didn't really get a chance to put together too much, but it basically talks about the futures exchange from the point of view that it really steps in the middle. Bilateral contracts between two individuals meant both had to assume some credit risk. Now those two individuals don't have to

assume that risk with each other; the exchange takes it on. The exchange essentially guarantees the performance of both parties.

At the end — I guess it would be a few pages along — we show a couple of examples of how we would see a futures contract working, how it would be designed and how it really could benefit the user much more than many futures contracts do now. In my opinion — and I've been in this business about 20 years, hedging with Canadian corporations and global investors — the major financial institutions use futures because they appreciate the credit issues and the price discovery issues, but to my mind the smaller corporations don't use them primarily because they don't understand them and they find the pricing, for whatever reason, difficult to comprehend.

I think it's vital for a successful contract in Ontario that it be very closely linked to the cash market. Using an electronic trading platform, we're really able to provide a fascinating look for users and producers so they can easily see what their exposure is and easily see how to hedge their risk.

If one were to say that futures are a good thing, I would certainly agree. The problem we see at the moment is that no one is going to launch a contract, obviously, where we have a dominant market player. The UK, for instance, has been deregulating electricity for almost eight years and they still don't have a futures contract. And you know what? They're not going to have one. It's only because no one would be foolish enough to advocate a futures contract where there are one or two generators that essentially can act somewhat in concert and they both have the same sort of load profile.

I suspect, if it's done correctly, that it's possible to have a futures contract in Ontario even though one might on paper have a dominant market player, if the Market Design Committee and the various groups do their bit to ensure that there's some of that power generation that's at market risk, as it were. We don't really feel there has to be a wholesale dismantling of the current generation arrangements as long as the dominant power can somehow be mitigated, or at least part of it can.

That's about all I really have to say. I didn't want to run you through the slides, necessarily, but they're background material. At the back there is an article we wrote for Canadian Investment Review. This is more for laymen in the investment business who really hadn't looked at electricity, just laying out some of the issues with respect to electricity trading. It's amazing how quickly there is interest developing in trading in price-risk management.

Our interest, if we can get more direct and move to the legislative issue, is to have some wording in Bill 35 that would encourage the establishment of an electricity futures contract in Ontario for the benefit of Ontarians, and to formalize the procedure for the IMO to investigate the use of futures for price-risk management for the benefit of Ontario citizens and corporations.

That's basically it. I want to thank you for your time. I'm sorry I was held up, but they were actually blasting on

Highway 64 and our cab was held up for about half an hour. I thought no one would be here, so it's fascinating.

Mrs Johns: Thank you very much for your presentation. It was interesting although probably somewhat above our heads.

Mr Conway: Speak for yourself.

Mrs Johns: I read your article a number of months ago when it appeared in a magazine. I want to ask you a couple of questions about this. First of all, we've heard a lot of discussion during our time on committee, mostly from municipal electric utilities, saying that price volatility is going to be an issue that's going to affect the retail consumer. They're concerned for the retail consumer, as we all are. By going into the futures market, will we be able to control some of the volatility that they say we're going to experience in the electricity market?

Mr Rudd: Futures provide price stability, there's no doubt about that. It's been proven. What it does is it allows everybody who has an interest in the price to participate. If we can go back to the electricity example of this summer in the United States, power really spiked, as you all know, in the US because of a credit default. People said, "Jeepers, if I'd known the price was there, I would have sold some." Well, the answer is, "You didn't; it was a private deal." The price ran up so quickly, no one could respond. People always knew after the fact. It was, "Hey, Dave, did you know two days ago that power got up to \$7,000 a megawatt?" That's too late. That's old news.

What a futures market would do is bring price movement to everybody who has an interest in selling into that marketplace, for instance. There are many people who, with prices at \$150 a megawatt, would shut down their plant, sell the power back, give everybody a cash bonus and they'd take the summer off. That's what you need. You need as public an information forum as possible. Any vehicle that can provide that, to my mind, is just going to be a tremendous benefit to reducing volatility.

Of course, what futures also bring is the fact that there's a vehicle whereby people can hedge their price risk. You won't get these panicky buyers in the spot market because they will have hedged.

Mrs Johns: You talked about an over-the-counter market versus the Toronto Stock Exchange. For many of us who deal in the stock market, we've dealt in over-the-counters such as NASDAQ or, worse yet maybe, some other ones, versus the Toronto Stock Exchange. What would be the advantage to us deciding on a market such as the Toronto Stock Exchange versus one of the central clearing mechanisms that might not be an exchange?

Mr Rudd: It is definitely different than a stock exchange. The Toronto Futures Exchange is owned by the Toronto Stock Exchange but it definitely operates under a different set of rules.

What would be the difference in an over-the-counter market? Public, regulated certainly, a high credit quality. This is one of the issues that's confounding everybody at the moment: Who is going to be responsible if something happens? In the futures exchange, each dealer guarantees each other dealer. If the Toronto Futures Exchange has

members like, say, Dominion Securities and the Royal Bank or Joe Blow, they all have to guarantee each other in the marketplace. In essence, I think the credit quality is a huge issue. That's really what happened in the United States. The funny thing about credit quality is that you don't need it until you can't get it. So we have to make sure that we don't denigrate this whole issue of credit, because it's what causes every blow-up. We really have to have vehicles in place.

What vehicle is in place? To my mind there is only one, and that's where every party will guarantee these transactions, and futures are one. It's linked up that way and it's been successful for so long because they put that structure in place that everybody had to have common rules. What often happens in the over-the-counter market is that people start to degrade their credit quality to get the business. I might go to you if I'm a client and you'd say, "I don't like your credit, Dave Inc." I'll go to the next one and the next one, and someone will say, "OK, I'll take it."

1720

Mr Conway: Thank you very much, Mr Rudd. I really appreciate the verve with which you have made this presentation, given the stresses under which you had to get here. I must tell you, I feel like I've just followed the Roman Curia down a fascinating Byzantine walk through Aquinian theology.

The Vice-Chair: Pardon me?

Mr Conway: It is. The only thing I know about futures — I saw a movie once about pork belly futures where some innocent fellow came to an unhappy end. I think it was a movie.

Interjection: A pig.

Mr Conway: A pig. But it's a wonderful world in which we live and you really seem to know this stuff. I take it that what you were saying is that the absence of a futures market for electricity exacerbated that problem in the United States last month. Is that basically your take on what happened in the US, where the spot price went berserk? Had there been a futures market for electricity, might that have been less problematic?

Mr Rudd: It certainly wouldn't have made it any worse. I don't want to go —

Mr Conway: Would it have made it any better?

Mr Rudd: Probably.

Mr Conway: The second and final question: I'm struck by what you said about Britain. We have a report from the Market Design Committee and they tell us that in Britain the regulator — not just the regulator, but the regulator apparently retained some analyst to look at the behaviour of National Power and PowerGen, and seven years after the deregulation began, according to the Market Design Committee report of last month, the firm of Brealey and Lapuerta "found evidence of persistent market manipulation" by the two big players, and you basically confirmed that.

Mr Rudd: I don't have personal evidence but I have anecdotal evidence from people at the scene, absolutely.

Mr Conway: We're going to begin the competitive market in Ontario with Genco having at least as much

market power as National Power and PowerGen had in the period of time. So what I don't understand is, you wouldn't recommend an electricity futures market for Britain because of the market dominance of those two players, but you would recommend one for Ontario. It seems to me as a layperson that that doesn't quite stand up, but I'm sure it does.

Mr Rudd: One of the unique things about Britain and the reason there really has been no development in the derivative market — if I can call it that, but the forwards market — is that one can't sell back into the system in the same way that we would hope that one could in Canada. One can't sell power back to the system at a market price. For instance, I gather that if you are a broker or a trader or a generator, you can't sell into the system. There are only two bidders in this bid system, and the two bidders to supply power are National Power and PowerGen. Why can't there be 50 other people that can supply power, can bid in or can sell physical power? That's one of the issues. It's really a one-way street in England. Essentially, since they both know their own load curves, basically, and the nuclear side from British Energy has a completely different load curve, there's no mystery to it.

Even though there are two players there, Ontario probably has — with what little we have of, say, Canadian Niagara Mohawk and a few others and a couple of the NUGs, we probably have more market risk or more dynamic trading, in many respects almost, already. But clearly, in the design of any contract, it's got to be very important for people to be able to sell back into the system. That's very important.

Mr Lessard: You're right, this is a very fascinating area. I come from Windsor, the home of the Windsor casino. I don't go there because I'm not much of a gambler. But consider that we accept your ideas and it's a couple of years from now and my wife and I are looking at the electricity bill and we think, "Gee, we might be able to get a better deal on our own." Is this an opportunity for us to try to get lower rates at our own household, to become involved in the futures electricity market?

Mr Rudd: I really don't think so. It's not the kind of issue that would really be a consumer-oriented product. At the same time, the dynamics of futures are that they provide a vehicle by which, if you have an opinion on electricity and you meet certain credit qualifications, you can participate to some extent in its price movement, as futures have always been for a hundred years.

Mr Lessard: So for residential consumers, if there's a benefit to be derived, it's going to be indirect at best.

Mr Rudd: It would certainly be indirect. I would think you'd have to be one pretty nimble and creditworthy residential consumer with a lot of load to actually get in there.

One thing that's important to futures and how this committee and the legislation will come to a determination that they've got a successful competitive marketplace is very simple: When you and I drive down the road and we see the price of gas at 55 cents, that's a good deal; 60 cents, maybe not so; 65, don't want it. We make decisions every day about price. As a matter of fact, if you really sit

back and think about it, that's all we do all day long, value our time and our effort: this computer versus that computer; that rug versus this rug etc. We have an innate ability to assess what's a good deal. We can't do that in electricity. Maybe you folks can here. I can't tell people what I'm paying per kilowatt-hour. I don't know how to access a better deal; I don't know how to get a worse deal. Some of the very large corporations are able to maybe do some browbeating and get a better deal.

The next time you're at a backyard barbecue and your two neighbours say, "Wayne, I got 6.7 cents," and another one says, "Yeah, but I got 6.65," you'll know you've got a successful contract, because you have a lot of bidders, a lot of sellers and you've got a real market.

Mr Lessard: You're talking about what is essentially a new industry and you're anticipating it to be a large industry. To sustain that industry, there's going to be a cost associated with it as well. Although it may be one mechanism to determine the market price of hydro, there is a cost associated with determining that price through this system.

Mr Rudd: Can you expand on that? What is the cost — I'm not quite sure.

Mr Lessard: What's the cost of establishing the futures trading market? There must be some —

Mr Rudd: It's really minimal. It's an electronic trading platform. It's a few hundred computers. If I can give you an example from the Montreal futures exchange, which has a very viable futures contract, on a daily basis Montreal trades about — yesterday they traded about \$60 billion worth of three-month money. The Montreal exchange has in total about 150 employees between the exchange and the various members. They provide a tremendous service for price discovery on interest rates in Canada, and a lot of that discovery and a lot of the effort they undertake is on behalf of non-Canadian investors. So relative to the amount that's traded, it's not even noticeable, it really isn't.

Don't forget, all they're taking out is a commission, and the commission on futures is very low. Very few people are offering any special deals, because we're all going to the same place; we're all going to the marketplace. So it doesn't take very long until commissions, if they're high, begin to collapse, because everybody's offering the same product. You're offering a product that is a high credit rating, where price is in the public realm, so what can I add over and above the next eight people? We have to compete on price.

The Vice-Chair: Thank you very much. You've elicited a great amount of interest and intrigue.

Mr Conway: I bet this guy came first in his class, too.

Mr Rudd: No.

Mr Conway: It was very good.

The Vice-Chair: If he didn't, he probably bet about whether he was going to get an 80 or a 70.

These meetings are adjourned until tomorrow morning at 9 o'clock in room 151. That's Friday the 14th.

The committee adjourned at 1730.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr Ted Arnott (Wellington PC)

Mr John R. Baird (Nepean PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Mr Gerry Phillips (Scarborough-Agincourt L)

Also taking part / Autres participants et participantes

Mr W. Leo Jordan (Lanark-Renfrew PC)

Ms Shelley Martel (Sudbury East / -Est ND)

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Ms Anne Marzalik, research officer,
Legislative Research Service

CONTENTS

Thursday 13 August 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson* /

| | |
|---|-------|
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, | |
| <i>projet de loi 35, M. Wilson</i> | R-101 |
| Sudbury and District Chamber of Commerce | R-101 |
| Mr Gerald Foley | |
| Sudbury Hydro | R-105 |
| Mr Harvey Prudhomme | |
| Canadian Niagara Power | R-109 |
| Mr Mardon Erbland | |
| North Bay Hydro | R-112 |
| Mr David Wills | |
| Mr Geoffrey Laplante | R-117 |
| Northwatch | R-121 |
| Ms Brennain Lloyd | |
| Great Lakes Power | R-125 |
| Mr Ed Kress | |
| Mr Harry Goldgut | |
| Mr William Bradley | R-129 |
| Wahnapitae First Nation | R-133 |
| Ms Carolyn Pettifer | |
| Mr Dwayne Nachkewe | |
| Chief Ed Roque | |
| Sault Ste Marie Public Utilities Commission | R-137 |
| Mr Ken Wallenius | |
| Inco Ltd | R-141 |
| Mr John LeMay | |
| Municipal Electric Association, district 9 | R-144 |
| Ms Susan Cochrane | |
| Mr Henri Robillard | |
| Toronto Futures Exchange | R-148 |
| Mr David Rudd | |



R-5

R-5

ISSN 1180-4378

**Legislative Assembly
of Ontario**

Second Interession, 36th Parliament

**Assemblée législative
de l'Ontario**

Deuxième interession, 36^e législature

**Official Report
of Debates
(Hansard)**

Friday 14 August 1998

**Journal
des débats
(Hansard)**

Vendredi 14 août 1998

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Energy Competition Act, 1998

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Friday 14 August 1998

Vendredi 14 août 1998

*The committee met at 0900 in room 151.*ENERGY COMPETITION ACT, 1998
LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

CANADIAN ASSOCIATION OF
ENERGY SERVICE COMPANIES

The Chair (Mrs Brenda Elliott): Good morning, everyone. I call to order the standing committee on resources development for the purposes of hearing presentations on Bill 35.

Our first presenters this morning back in Toronto are from the Canadian Association of Energy Service Companies, Mr Levy. Will you please come forward. Good morning and welcome. Make yourself comfortable. If you'd like to formally introduce yourself for the Hansard record, you have 30 minutes for presentation time. You may use all of that time for presentation, but we always prefer if you leave some time for questions. Please begin.

Mr Alan Levy: My name is Alan Levy. I'm president of the Canadian Association of Energy Service Companies. What I propose to do, unless the Chair feels otherwise, is briefly go through an executive summary, which I believe you should all have a copy of in front of you, and then perhaps just walk you quickly through the body of our presentation and leave enough time, as you suggested, for questions.

The Canadian Association of Energy Service Companies, or CAESCO, represents a broad cross-section of businesses and organizations whose mission is energy efficiency. We have over 100 members, and 13 of our members are what we call energy service companies — I'll explain that in a moment — and we've been around for 10 years.

Energy service companies are somewhat unique in the energy efficiency business in that they guarantee their savings performance, they arrange all the financing, all the engineering, all the construction to complete an energy efficiency project and get paid out of the savings. No savings, they don't get any money.

In Canada we are regarded as the world leaders in the ESCO business. Member companies are responsible for investments of over \$1 billion to date since we've been in business, since about the early 1980s. As I've mentioned here, we believe, the federal government believes and other governments believe that we do play and will continue to play a prominent role in Canada's Kyoto targets and, indeed, as discovered in preparation for this presentation, the Ontario government's targets for energy efficiency cost savings.

In general we support Bill 35, but we do respectfully offer some caution on the impact of the bill and the changes that will occur on energy efficiency. In particular, while none of us, I understand, quite knows now how the stranded debt will play its way into the marketplace, we urge the government to be cautious, when that decision is being discussed, in making sure there is no discrimination against energy efficiency.

We also are concerned with the issue of the market power of the Ontario Hydro companies and some of the larger distribution companies as they move into competitive markets. We welcome them in those competitive markets, but let's make it competition and not, as we use the phrase, the elephant rolling over and crushing the smaller private sector companies.

We also raise the issue, which is a very strong issue in the United States and elsewhere where deregulation has occurred, of cross-subsidization between regulated and non-regulated utility affiliates. The California Public Utility Commission estimates that cross-subsidization is approaching over \$100 million a year at present in that state alone, and they estimate \$2 billion a year in the United States. What I'm talking about there is sharing of customer data between regulated and non-regulated companies, transfer of employees and employee benefits, using the financial capacity of the regulated affiliate to secure better financing terms for the non-regulated affiliate, shared logos and trademarks, bill inserts and preferential referrals.

The last thing I want to mention in terms of the issues is the distribution utilities. We haven't seen any discussion

in Bill 35, or indeed at the Market Design Committee, about what services of the distribution companies, other than purely managing the wires, will be open to competition and contested. For example, there are certain services they provide in maintaining and servicing transformers. Some of that work is presently contracted out to the private sector, some is carried out internally within the regulated distribution utilities. We think there needs to be a discussion, in terms of what's the best value to the customer, of what stays in the regulated utility and what should be taken outside.

Like the Market Design Committee, we are not in favour of a non-bypassable systems benefit charge to fund DSM, ie, demand-side management, or energy efficiency.

We are concerned that the issues I've raised probably can't be dealt with promptly and effectively through a process such as interventions at an Ontario Energy Board hearing. It may be a case of too little too late. If you look at the bill, one of its major principles is to facilitate energy efficiency. The government is asking the OEB to act as a body to make sure that the government's policies in energy efficiency are enacted. We suspect that energy efficiency over time will move from the regulated utilities into the non-regulated, and therefore that could weaken the intent of the bill, for the government to use the OEB as an instrument for energy efficiency.

We have a proposal, which is that a stakeholder group with profile and authority, made up of private and public sector bodies working closely as an advisory group to the government — perhaps like the Market Design Committee has done; I've just watched at a distance, but it seems to have done an effective job — be a real-time monitor for the issues I've outlined to you today and advise the government of where there should be policy changes, where the OEB should act to correct market distortions. All this is related to energy efficiency. We believe, if you agree, that this should be formalized in Bill 35.

That's an overview. If you wish, I can quickly go through the points that I've raised in the body of the text, and I will just emphasize those which are most important.

Point 1: I want to make it clear that we represent a broad cross-section of businesses, governments and utilities involved in energy efficiency.

Point 3: Note that our intervention relates to something right at the start of the act, and that is, it says in clause 1(g) that a purpose of the act is "to facilitate energy efficiency and the use of cleaner, more environmentally benign energy sources in a manner consistent with the policies of the government of Ontario," and that's about it. Not a great deal is said after that about energy efficiency. Two key points there: What are the current policies of the government, and the next point is, is the OEB going to be an effective vehicle to facilitate energy efficiency?

Energy efficiency is important for this bill but it's important for Ontario, it's important for Canada and it's important for the world, because every world leader who speaks about Kyoto and global emissions talks about energy efficiency in buildings as, if you like, a no-brainer solution as a contribution to emission reductions. Energy

efficiency creates jobs, makes businesses and organizations more competitive. I haven't heard one voice anywhere saying it isn't a good thing to do, so we're talking about an issue here of paramount social and economic importance to this country as well as to this province.

I have to say that our organization has enjoyed an excellent relationship with both the gas and electric utility companies. I mention that because I think that gives me confidence that we can work in a stakeholder group and effectively move forward.

I also wish to make the committee aware, in point 8 on page 3, that we have a robust energy efficiency industry here in Ontario and in Canada. Some of the largest energy efficiency projects in the world take place quite close to where we're sitting now. The city of Toronto has a very ambitious program called the better buildings program. The Toronto District School Board has embarked upon one of the largest energy efficiency projects in the world in the school buildings.

I move now to point 10 on page 4, and that is the recommendations of the Market Design Committee, because I think they impact your deliberations.

0910

There were two recommendations concerning energy efficiency: 5.4 was a recommendation for demand-side bidding. Without going into the technicalities of that, that is a loaded phrase, "demand-side bidding," in our industry. I think what the Market Design Committee meant was enabling energy users to aggregate their demand and therefore sell to the utilities their ability to reduce their demand and therefore keep the cost of electricity down. We explain in the text there the other meaning of demand-side bidding, and we think there should be clarification of that.

The second recommendation we agree with in part. We agree with the Market Design Committee that there not be a non-bypassable systems benefits charge to fund an energy efficiency or demand-side management investment program, which somebody, presumably some government or quasi-government body, would then distribute into the marketplace. What the Market Design Committee does recommend is additional funds for the Ministry of Energy, Science and Technology, with particular emphasis on information and education. We urge caution with that. We think that's a good idea if those funds are used in close collaboration with the private sector.

In the past, government programs relating to energy efficiency have often been inconsistent and ephemeral, particularly when they get involved in a transaction that relates to an end user using less energy efficiency, either by virtue of financing or — in other words, the government arranges a fund to help project financing or contributes an incentive fund for an energy investment study. I think they are well-meaning but, in our opinion, over the last 15 years, money not well spent.

I turn now to point 11 on page 4. The government has a 1998-99 business plan relating to energy efficiency. We believe all the recommendations that we make are entirely consistent and congruent with those policies and plans.

Indeed, the government has put in their targets saving \$230 million by the year 2000, and we believe our members alone will contribute 25% of that. So our recommendations in here, we believe, are consistent with the key parts of the government's existing policy, particularly partnerships with energy stakeholders.

Finally, I'll say something which may surprise you, but we don't want financial incentives in the marketplace. We've experienced them before. They distort the marketplace. They create fly-by-night companies that come in when the incentives are there and then disappear when they are removed. We argue strongly against financial incentives to bribe customers into energy efficiency. We believe there are economic investments to be made and we have to create a business climate where the marketplace can be allowed to function.

The Chair: Thank you. We have five minutes remaining for questioning from each caucus.

Mr Sean G. Conway (Renfrew North): Thank you, Mr Levy. Alan, I'd just like to put your very helpful testimony to a level of an average residential or small business customer. I think I understand a good bit of what you're telling us here in general terms. Explain to me how this policy has to work to deliver measurable retail benefits to a residential electricity customer living in North York or anywhere else, particularly from the point of view of the energy services sector that you know so well.

Mr Levy: When you refer to policy —

Mr Conway: You make a number of suggestions here that I think I understand in general terms. Your last point is very well taken, about laying off the financial incentives because you'll distort the marketplace. I just want you maybe to help me and the committee with a couple of specific examples of how this policy, if it works properly — I understand clearly when you say, for example: "Stay away from the financial incentives. That will distort the marketplace."

Let me maybe help you a bit by saying that Hydro has told the committee this week that they plan to aggressively grow the retail company. I think that's a problem. I think it's a problem because in the past, with the very best of intentions and with strong support from government — of more than one kind, I might add — Hydro has, because it was so large and so cumbersome, in my view, tried with the best of intentions to get into this business with not very good results.

Let's take Servco, as you understand it. Is it going to be a problem if the retail company of Ontario Hydro grows aggressively, or am I wrong in that suspicion?

Mr Levy: I think there are two questions there. First, what does all this do for the residential customer and the small business owner? The second one is related to the potential market power of Ontario Hydro retail.

Let me answer the first one. I would say our industry in particular, the energy service industry, has been somewhat successful with the residential customer in multi-unit family dwellings — not terribly successful, but somewhat.

You see, we're most successful and there are instances around the world where success in energy efficiency

comes where you aggregate smaller customers, just as you've seen happen with the gas industry, where people can get homeowners to aggregate together and then serve them with cheaper gas. We have to do that on the energy efficiency, energy services side. An example of where that has begun to work well has been the city of Toronto Better Buildings Partnership, where they bring together the utility companies — I think in this case it was Consumers' Gas — the government and the private sector, and say, "How can we reach the citizens of Toronto?"

The reason I say aggregation is so important is, you can imagine the overhead cost of a company marketing to lots of individuals. It's horrific. We know that in this new marketplace, new world, the utility companies will be, in a deregulated mode, addressing the needs of the individual consumer. They're going to put market resources to that. They have a big customer retention issue. So I think if you combine the resources of the utilities that have no choice but to try and retain individual small customers, they are in a sense already doing the aggregation for us.

Mr Conway: Let me just ask this. If aggregation of a cluster of small customers is really important, what are the impediments in the marketplace that you see to that happening? Or are there any?

Mr Levy: I don't think there are, in the sense of anything legal or regulatory. I just think it's a marketing issue, and when we get the right constituents together I believe that will happen. It has happened in the United States on occasion in the last 10 years. There are instances of where this has happened.

Mr Conway: If you're happy, I'm happy, because this is exciting. I want benefits for the average residential customer, and that's what we're promising. That's what we want to deliver. You know this business better than I. You made a point that in your business you go out and guarantee the results, and if you don't produce the results, tough luck for company A or company B.

I want to also ask you about that stranded debt. We've been told that we probably aren't going to see any of the concrete data around stranded debt for weeks, perhaps months, to come. How important is an understanding of the stranded debt, its amount and its distribution to delivering downstream benefits to the average hydro customer?

Mr Levy: I think it could be very important. In our business, one thing that makes customers act against energy efficiency, as I know from the situation in Australia, is uncertainty in what the future cost is, whether it be fuel or electricity. You can get a market neurosis with short-term energy costs, so people just look out for the best short-term price in electricity or gas and put aside what we would consider economic investments, two- or three-year payback, in energy efficiency.

0920

With respect to your question, to the extent that the uncertainty about stranded debt creates uncertainty in the marketplace for consumers and end-users to make financial and economic decisions, it is of concern to us.

Mr Wayne Lessard (Windsor-Riverside): I certainly appreciate your presentation, Mr Levy. It really identifies

what I think is a shortfall in Bill 35, and that is more attention to the details of energy conservation.

You've identified in the purposes clause of the bill and posed a question: What are the policies of the government of Ontario with respect to the environment and energy efficiency? We've had a report from the Environmental Commissioner recently that has been very critical of the policies of the current government with respect to the environment. So I share your question about what the policies of this government are when it comes to the environment and how they're going to be implemented to try and make improvements through Bill 35. That's why I think we need some tougher language in the bill to ensure that we do see environmental improvement and energy efficiency as a result of Bill 35.

You mentioned as well that your energy-efficient programs have been very successful here in Ontario, and I think there's a good reason for that. One is because of your expertise and the other is that we're really recognized as energy wasters among the world and it's relatively easy to find savings. But there must be some way to encourage people to do that, I think.

I'm surprised, as you've mentioned in your remarks that we would be, that you wouldn't think financial incentives or disincentives would be a good idea. I would think that if price, for example, were to go up for electricity, people would be more inclined to try and implement energy efficiency and conservation measures. I'm curious. Other than the fact that you say that government incentives might encourage fly-by-night companies to come in, why wouldn't you think that other types of financial incentives would work to encourage energy efficiency?

Mr Levy: I just relate to our experience over the last 15 years. Financial incentives, usually from government, don't last. They're meant as a stimulus to make something happen, to encourage a market transformation. In general, financial incentives, in our opinion, have not worked well because they've not been well thought out as to the long-term ramifications — in other words, will they sustain a market transformation? — and in our view are unnecessary.

We're out there in the marketplace. We don't see as a major barrier to energy efficiency a financial grant from any government or quasi-government body. There are issues in the marketplace, market barriers that exist, which we believe can be overcome by collaboration, particularly in this new environment, with utilities, government bodies and private sector stakeholder partners.

Mr Doug Galt (Northumberland): Thank you, Mr Levy, for your very informative presentation. I'm particularly intrigued with your last request in item 12(ii), where you're asking to "Avoid financial incentives and disincentives for energy efficiency." It's a rather unique request coming to government to ask for no financial assistance. I think I can assure you that this government will pay the strictest attention to that particular request, as original as it is.

As you are aware, this is enabling legislation as it relates to energy efficiency, as it relates to environmental control and activities. Most of this will be written into regulation. I notice you're concerned about discrimination against energy efficiency. I suggest that competition being brought in with this bill and consumer choice would be the catalyst to ensure that energy efficiency will occur.

Do you see anything in the legislation that would block or inhibit regulations being written so that it would encourage, promote, pressure energy efficiency to occur?

Mr Levy: No, I don't see anything written in there that would act against it, nor do I see anything written there pro energy efficiency. Your remarks that you are surprised and gratified that we don't want incentives — remember, we don't want any disincentives either.

Mr Galt: Certainly.

Mr Levy: That may be more tricky for you. All we ask you is that as you go through this very difficult, complex process, someone raise the flag periodically and say, "What is this going to do for energy efficiency?" I'm sure it won't be by design that you would harm energy efficiency, but it could be a consequence of something inadvertently happening. For example, to take Mr Conway's point of where the stranded debt falls, I don't know yet and we can just hypothesize, but it could happen that it skews rate structures or in some way would act against what we call comprehensive measures.

To understand this, we have a philosophy about energy efficiency. That is, when you address a building such as this, you do it in a comprehensive fashion. You don't just change the lights; you look at the heating, the cooling, the humidification. If you don't do that, you create air quality problems and all the rest of it. So it's not a semantic point, this comprehensive approach. It's very important. Someone around the table has to raise the flag and say, "Hey, what's this going to do for energy efficiency?" It's up there as a principle.

Mr Galt: It's always difficult, when you're writing legislation, how much you put into legislation, which is very cumbersome to change down the road, and how much you put into regulation, which is much easier to change down the road. In this case we can upgrade this as technology changes, so there are some advantages there.

Madam Chair, I defer to Ms Johns.

Mrs Helen Johns (Huron): Thank you for being here. I just wanted to ask you a question after I emphasize this: This government is placing a great deal of importance on the broad objectives and the purpose clauses in these. We certainly have every intention of following through on these broad objectives to ensure that we meet the parameters that the bill sets. As you may be aware from past litigation that has happened with the government, these purpose clauses become very important in the future, so to put energy efficiency in one of our purpose clauses really does say that we are interested and we are concerned.

I have a quote from the Canadian Energy Research Institute. This morning I'm going to have to put my glasses on to read it.

"Rather than adopting a piecemeal approach to the issues of environment and energy efficiency, a comprehensive program should be established to deal with the role of environmental programs in the new marketplace. Regulators can determine if there is a need to foster DSM, renewable energy or R&D after the market has been given a chance to operate."

Do you believe we need to see how the market is going to operate before we can move forward with determining the regulations for energy efficiency and those kinds of things, and do you believe it is best imposed in regulations as opposed to in the legislation?

Mr Levy: There are two points we've made. One is, who knows how long it's going to take the market to unfold? So what we're proposing is to create some stakeholder alliance that's reporting to you and that is monitoring the marketplace as it unfolds. It may be an error to say, "Let's wait and see, and then maybe in two or three years we'll fix whatever problems occur." We think you can do it on a real-time basis with the stakeholders involved. That is one difference.

The Chair: On that note I must interrupt. Our time has expired. We thank you very much for coming before the committee with your advice and your expertise. We will take your considerations to heart.

0930

ENRON CAPITAL AND TRADE RESOURCES CANADA CORP

The Chair: I now call upon representatives from Enron Capital and Trade Resources Canada Corp. Good morning and welcome. Please make yourself comfortable. Are you Mr Shapiro?

Mr Richard Shapiro: I am.

The Chair: It's nice to have you here. Please introduce yourself and your title in full for the Hansard record.

Mr Shapiro: I will do that. My name is Richard Shapiro. I am vice-president of state government affairs for Enron Corp.

Enron Corp is a global, diversified energy company that includes among its corporate family ECT Canada, Enron Capital and Trade Resources Canada. Enron Capital and Trade Resources Canada is, among other things, a leading wholesale natural gas provider in Canada. It employs over 75 people here in this country and has over \$2 billion in annual revenues. Enron is also a company that is very proud of its environmental businesses and environmental track record. We are the leading producer of wind energy in the world. Through a joint venture, we are the second-largest manufacturer of solar panels and have been recognized by the White House recently for our environmental stewardship record.

We as a company, I think very importantly to this subject, have supported the competitive restructuring of the energy industry and liberalization of energy markets around the world. We believe that our customers and our competitors' customers have benefited significantly from our efforts.

We are here today to support the government's initiative in the introduction of the bill. We believe that the competitive restructuring of this industry is a process, not an event. Minister Wilson used very much the same terms in his remarks I think this past Tuesday with respect to this being a process, not an event. The government is to be commended for the significant achievement of beginning the process. The government and others, including the stakeholders' alliance, are also to be commended for creating a consensus among the stakeholders as you undertake this very important and commendable process.

My purpose here today is not only to state support for the government's initiative and to commend you for your achievement, but also to provide a perspective on the restructuring process in the United States on a few key issues in the brief time that we have.

We've provided a submission that I'm not going to necessarily follow in order. I will refer from time to time to some of the maps and other pages that are contained therein. Here are the issues I'm going to touch on very briefly and try to leave some time for questions: Why did we undertake this process of competitive restructuring of the energy industry in the US? I'm going to talk a little bit about this past summer's experience in the midwestern electric markets; talk about what's going on in the industry, both the electric and gas industries in the US, in terms of consolidation, merger and acquisition activity, as well as specialization within the various segments of the industry; and then talk for a few moments about consumer protections in a competitive electric market.

In many of the presentations that I've done recently, I've started out a little bit by taking us back to why we began this process in the United States and I think why you're undertaking this process here in Ontario. Very briefly, I think there's a fundamental belief in both of our countries that markets create a level of efficiency and a level of creativity that are not replicated elsewhere. We have experience in both countries as well from other industries, other network industries like natural gas and telecommunications, going through market liberalization and competitive restructuring that have produced significant benefits for all segments of the consumer population, from residential on up to large industrial.

Probably the most powerful, the most important reason for undertaking this process is the proper placement of risk. We have in both countries an issue called stranded cost, stranded debt. If you go back to the genesis of that problem and that issue, it's the result of placing the risk, the burden of investment decisions that were made primarily in generation on the backs of consumers. So when a bad decision, with 20-20 hindsight, was made in building a certain type of facility or there were certain cost overruns in building a certain type of generation facility, consumers bore that burden in both countries.

In the future, as we competitively restructure this industry, the key reason, I believe, for undertaking this process is to place that risk, place that burden on those who can best bear it, and that is the marketplace. These reasons, we believe, in the US are just as powerful as they were five, six, seven years ago when our US Congress

first undertook the process of enacting the Energy Policy Act of 1992. We need no new generation of stranded costs in either country.

I often use an example of automobiles. You could talk about widgets, you could talk about anything else and apply it to this industry. If the marketplace for a widget or a car is \$2 per unit and somebody builds a plant in the marketplace that produces a widget for \$3, they don't recover the cost of their investment in the marketplace. Their shareholders, their investors are the ones who bear the burden of that bad decision they might have made. Obviously, what has taken place in this industry in both countries has been quite different in the bad decisions, in hindsight, that have been made with respect to certain generation construction decisions having improperly been borne by consumers.

I'm going to talk a little bit about the Midwest experience. I'm sure many of you have read about and are quite familiar with the price fights that occurred for a very brief time back in July. First I'll tell you a little bit about why it happened in terms of some of the physical characteristics that contributed to the event. There was a period of extremely hot weather in the Midwest. There were some weather-related transmission outages. There were generation facility shutdowns that were not planned. You had the default of an undercapitalized marketer and also the default of an electric municipal system in the Midwest. You had transmission constraints, some of which were real and, as I'll talk about in a few moments, some of which may not have been entirely real.

Fundamentally, you also had a failure of price signals to filter through to industrial customers so they could modify their usage behaviour in response to the conditions that were occurring in the Midwest, something that would very likely occur in a marketplace where customers would be getting the appropriate price signals from their suppliers. What you ended up with was a market where buyers would pay anything for power.

A couple of other contributing factors: You have not had, in the Midwestern United States, significant generation construction probably for about five years. The most fundamental reason is that the Midwest has stalled as of recently in undertaking the retail restructuring of the electric industry, so you have a significant amount of regulatory uncertainty. You have investor-owned utilities that are unwilling to go out and make generation construction investments because they don't have an assurance of recovery any longer through the regulatory process and they don't know what kind of market structure will be in place on the horizon. You don't have private investors like our company willing to come into that marketplace and make generation construction decisions, again because of the regulatory uncertainty and the uncertainty of what the future statutory construct will look like.

One other thing that happened in the Midwest, as you have here in Ontario — you have vertically integrated companies that own generation as well as transmission. There's some evidence, and growing evidence, that certain companies did not behave economically rationally with respect to use of optimizing their transmission systems to

benefit their own generation. As a result, you might not have had as much power moving to load centres as would have been the case had companies been behaving more rationally, were they not vertically integrated.

Some of the lessons learned from the Midwest I think are quite important. We believe the primary lesson is that we need to create competitive markets as soon as possible. We have evidence in the United States, in certain regions such as New England and California that have undertaken the process of competitively restructuring the industry, that private investment is very willing to come in and build generation. In New England, a system that has a peak load of 21,000 megawatts, there are currently pending before the New England independent transmission system operator requests for studies for 29,000 megawatts of generation. It's everyone's expectation that at the end of the day about 5,000 to 6,000 megawatts of generation will get built out of the studies that are pending. In California you currently have about 7,000 megawatts of generation in the process of being permitted enough power to light the city of LA that are going through that process. Once you provide the regulatory certainty, people will come and they will build and they will invest.

0940

The other lesson is that competition does not degrade reliability. In fact, quite to the contrary, it enhances reliability. One thing to remember about the Midwest experience this summer is that the lights stayed on. You can contrast that to a recent experience in Chicago, in 1995 — very hot weather, generation facilities down, transmission constraints — where the lights went out. As many of you may recall, people died in the city of Chicago because the utilities could not access additional supplies. The bottom line is that the market worked. It kept the lights on, albeit at a high price for a very short period of time.

I think the lesson for us in the US is that we need to finish the job of competitive restructuring. We need to put in place certainty with respect to what the retail marketplace in the Midwest will look like so that companies will begin to come in and make the necessary investments in the electric infrastructure.

One other issue I'd like to talk about a little bit here today is the consolidation and specialization that are going on in our industry. I think there's a map in the submission that we provided you that shows a significant level of merger and acquisition activity and also a significant level of divestiture activity with respect to generation facilities.

We've seen, in many of the regions that have undergone restructuring, the decision to have the vertically integrated companies divest themselves of their generation facilities. We've seen significant premiums paid for those assets and obviously we've seen mitigation of market power through the sale of those assets as well.

We've recently also had a transaction signed that would for the first time divest a company of its nuclear facility, and that is, General Public Utilities out of Pennsylvania has entered into a contract with AmerGen, which is a joint venture between British Energy and

PECO Energy out of Philadelphia to sell the Three Mile Island nuclear unit that is currently operating.

The bottom line out of all this merger and acquisition and divestiture activity is that we're seeing increasing specialization among the segments of the electric industry in the US. You're seeing companies begin to specialize in distribution. You're seeing companies like Entergy, which is out of the southern United States, begin to talk about wanting to be a transco or transmission company across various regions of the country. You have companies like PECO Energy and Entergy again that are very interested in acquiring nuclear facilities, that believe they've operated their own nuclear facilities at a very high standard and expect to do so with other facilities that they begin to acquire. You also are seeing companies specializing in the construction and purchasing of fossil facilities.

I believe that this specialization which is occurring in the American electric utility industry will result in more efficiency. You're going to have companies within each segment of the industry that develop more scale and scope, that perform with a higher degree of excellence in their operations within each segment that will result in a more efficient industry in every respect and in every segment.

The last issue I'd like to touch on is consumer protection. As we undertake the competitive restructuring of the electric industry here in Ontario and in the United States, clearly one of the issues that has been at the forefront is how do we build in sufficient consumer protections to make sure that consumers are benefited and are protected from less than credible providers in the marketplace.

I can briefly touch upon our own experience in Portland, Oregon. Some of you may be aware that Enron Corp owns Portland General Electric, which is an investor-owned utility, a vertically integrated utility, in the northwest. I guess about a year ago we submitted to the Oregon Public Utilities Commission a comprehensive plan for the competitive restructuring of our company service area. In that we put forward a very comprehensive consumer bill of rights, which is contained in this submission that I've provided you here today. I'm not going to walk through that, I think it's self-explanatory, but I think it evidences our company's understanding and recognition of the need for consumer protections in a competitive marketplace. There's every reason why, with sufficient consumer protections, the marketplace can work for all consumers.

In conclusion I'd like to commend you again for beginning this very important process. This is a correct and necessary step. We believe, as evidenced by what has happened in the Midwest in the United States this summer, that time is of the essence. We believe this initiative will help sustain and enhance continued economic growth here in Ontario. We, as a company, look forward to being an active participant in this province's electric industry.

The Chair: We have five minutes for questions from each caucus and we'll begin with the NDP caucus.

Mr Lessard: I want to talk to you about stranded debt. In Bill 35, there's the intention expressed by the government that it's going to create a competitive environment.

I'm not so sure it does that, but it's an elaborate mechanism to get the stranded debt monkey off the government's back and try and get it on to someone else's back. A lot of people out there are saying, "I don't want it and I shouldn't have it," and as an investor in generating facilities you probably say that generators shouldn't have it placed on their backs. But I don't want to see residential consumers the ones who are going to be bearing the brunt of these bad investment decisions that had been made in the past. I agree with you that in future, bad mistakes for generating should be placed on the backs of investors and shareholders. That makes sense to me.

But for right now, I wonder whether a company like Enron would be more interested in investing in new generating facilities here in Ontario or in buying existing Ontario Hydro facilities. I'm sure that you've given some thought to that, as to whether there'd be more focus, more interest in buying existing generating facilities in Ontario than in constructing new ones.

Mr Shapiro: I think you've asked a number of questions and I'll try to touch on all of them.

In terms of stranded cost, stranded debt, the first thing I think we all need to remember is that those costs are already in the rates that consumers are paying. This is true in the US and it's true here in Ontario. It's not as if we're imposing a new tax, a new burden on consumers. It's already there in their rates.

One of the things we have tried to do in this process in the United States, I think as you have done here in Ontario, is find ways to mitigate that number, to reduce that number from where it currently stands today. There are various ways to do that. We'll be participating in the process and suggesting some of the ways that mitigation can be enhanced.

We have consistently, with respect to stranded costs and stranded debt, advocated a non-discriminatory access charge of sorts so that all consumers are equitably exposed to the historical costs. Obviously, if we could wave a magic wand and make those costs, which are billions of dollars, go away both in the US and here in Ontario, we as a company would love to have that happen. But I think the bargain that has been getting struck in the restructuring of this industry in both countries is that we're going to have to deal in an equitable manner with the costs that have been left by some of the bad decisions that have been made in both countries and deal with those in an equitable manner.

With respect to a preference for buying existing generation or building new generation, I think we haven't made any decisions in that regard. I'm not sure with the current approach that we're going to have an opportunity to buy, in the near term, existing facilities, although there might be opportunities to lease existing facilities, buy output from existing facilities. We as a company will look very carefully at those options as well as considering very carefully the opportunity to build new generation.

We have just, for example, recently announced the construction of a 500-megawatt facility in Pittsburg, California, which is in the San Francisco Bay area. We're

very interested in finding opportunities to build new generation where those opportunities lie.

Mr Lessard: Do you think you would be serving the Ontario market from United States generation facilities?
0950

The Chair: I'm sorry. I'm going to have to interrupt. We have to move to the next caucus.

Mr John R. Baird (Nepean): I want to thank you for your presentation. It has been a very different perspective. We've heard a little bit about some of the issues you have raised, but it has been particularly useful, so I want to thank you.

I didn't want to have to do this, and I have a lot of respect for my friend the member for Riverside, but he has forced me to bring out my chart again.

He said he doesn't want to see residential consumers bear the brunt for the stranded debt. We know residential consumers are bearing the brunt now, and business consumers, with 40% to 44% going on interest, and they are going to continue to bear the brunt under the new regime until the stranded debt is paid off — with no new debt, not \$1 of new debt on this as a result of this bill — because successive governments did not watch the shop, particularly over the last 10 years, but all three parties can bear some responsibility. Someone wasn't watching the shop, and Ontario Hydro kept borrowing billions and billions of dollars. The member for Windsor-Riverside wants to see this rest on the backs of the shareholders. The people of Ontario are the shareholders, and regrettably, for some time to come, we're going to be bearing the brunt.

I like charts, so I particularly liked your chart, which I have gone through. It has given me some new things to hold up.

I want to discuss price volatility, because we're all concerned about price volatility for customers. With this bill we wanted to help people, help people get jobs and help people in their own lives. Can you tell us from your experience with respect to this issue, based on that experience, what you expect to happen? We've seen here some terrific results over two years, five years and 10 years, in trucking, railroad, airlines, long distance, telecom and natural gas. Can you give us your best advice on what you think is going to happen to prices in Ontario over the two- to 10-year period after this bill?

Mr Shapiro: I think that clearly in the short run the amounts of the savings will be smaller, because we're going to have to deal with the generation of historical above-market costs and debt that you illustrated in your first chart. Clearly the opportunities for savings will be fewer in the short term, but we believe that for some of the reasons I have talked about in terms of some of the industry phenomena that we're seeing in the US also occurring here to various degrees, you're going to see efficiencies driven in virtually every segment of the industry as we render it more competitive.

I can't sit here and tell you, as I think is evidenced by that chart, that savings within 10 years will reach the 30% to 40% level in the electric utility industry, but I think the

savings will be significant. I think we have always underestimated the creativity of the marketplace in its ability to deliver services at less cost and in more creative ways, so I'm confident that savings will increase over time. Particularly as we move out beyond the burden of our historical mistakes in both countries, the savings will grow significantly.

For example, in California we're in the midst of a transition period where the stranded cost, stranded debt, is being paid off. That transition period is due to end no later than March 31, 2002. Consumers today are seeing savings somewhere in the range of 3% to 10%. Some of it has been mandated by statute, some of it is being achieved in the marketplace, particularly by larger consumers. If you look at the amount of the stranded costs that are embedded in customers' rates today, and we expect those to fall off in the next three or four years, you're likely to see reductions in costs of 25% to 30% in California from where rates were pre-restructuring.

Mr Baird: That takes us to the thought that rates are going to be stable well into the next decade, and we're having a five-year price freeze. If no action was taken, could rates conceivably go up?

Mr Shapiro: I can't sit here and tell you that there won't be some modest increase in gas costs that obviously will translate into slightly higher electric generation costs in both of our countries, but if you look at the level of stranded cost, stranded debt, and you see those costs over a period of time beginning to go away, it's hard to conceive of any increases in electric generation costs even coming close to matching the decline that we'll see once the stranded cost, stranded debt, begin to fall off.

Again, this is sort of the creativity, the ingenuity of the marketplace. I think the marketplace has always to some degree defied reality in its ability to deliver generation for less and less over time. We're building gas-fired generation plants today in both countries at prices and with efficiency levels that were unheard of 10, 15, 20 years ago. I see no reason why that technological innovation won't continue and in fact get accelerated as we open up the marketplace to more competition.

The Chair: We move to Mr Conway from the official opposition.

Mr Conway: I want to ask a couple of questions. I share with you the expectation that particularly because we've got apparently an endless supply of very cheaply priced natural gas, and we now have the electricity-making technology to convert that endlessly available, endlessly cheap natural gas into electricity, that downstream we should be able to provide some pretty attractive electricity rates to our customers, assuming that we're right, that natural gas is endlessly available and relatively cheap, because that seems to be where everybody is going. The unstated assumption is that most of the new electricity is going to be gas-fired.

But my concern is in the short term here in Ontario. We have a situation that seems to be problematic in this respect, if we're thinking about competition, because our old utility, Ontario Hydro, is going to be broken up but

broken up very, very minimally. We're going to have a very large generator called Genco and we're apparently going to have a very large and aggressive retail company, so it doesn't appear that we are going to, in the early days at least, get very much divestiture, very much disaggregation on the generation side — this, by the way, at the time when we've got this stranded debt to worry about.

My friends in the government are quick to raise their charts and talk about how it's all in the rates now. The problem is, in the last 18 months, this gigantic public utility that is Ontario Hydro has written off \$8.2 billion in losses that aren't in the rates, that are parked on the sidings, to be decided. That's my concern. My particular concern is that the residential electricity customer in the short and near term — by that I mean three to five years — does not get stuck with a disproportionate share of writing down this multi-billion dollar debt, particularly the billions of dollars of debt not yet in the rates. I cite the fact that in the last 18 months, \$8.2 billion has been written off and it's nowhere in anybody's rate.

What advice do you have to this committee about the apparent contradiction, that we have a policy that I think rightly intends in the direction of competition on the one hand, and on the other hand we don't appear to have very much disaggregation planned in the early days of this new policy on either generation or retail in this province?

Mr Shapiro: A couple of comments, first on your natural gas comments. When I first came into this industry some 13 or 14 years ago, I was always hearing about this gas bubble, and that gas bubble, 13 or 14 years later in a competitive natural gas industry, still exists. The marketplace has responded time and time again when there are the proper price signals in the marketplace to find new supplies of natural gas. Everything that I see, every projection that our company and other independent third-party studies have made, I think holds that same degree of confidence well out into the future with respect to natural gas supplies.

I guess I go back to my initial statement that this is a process, not an event. If I were able to come into Ontario and have the ability to create the industry, a competitive market structure as I think it ought to be created, it wouldn't look exactly like this bill, but I think that beginning the process is a significant achievement for this province. We, as a company that is not known for infinite patience in terms of wanting to transform regulated industries into competitive markets, would like to have this done in a flash cut. The reality is that there are many stakeholders, many interests in this process that appropriately have a voice. We end up taking smaller steps at the beginning than we would like but I have infinite confidence in the marketplace, and once you begin to unleash the forces of the marketplace, as I believe this bill does, good things will come.

1000

Mr Conway: Mr Shapiro, speaking about the patience of Enron, I noticed in the United States press here a few weeks ago something about Enron getting a bit impatient and withdrawing from part of the deregulated electricity

market in California. Could you just explain a bit of the recent California experience that Enron has had?

Mr Shapiro: You're not the first person to ask that question. The question is, why did we decide for the time being to suspend our efforts in the residential marketplace in California? I've always thought the better question is, why were we ever there in the first place?

Mr Conway: My question is, why did you leave?

Mr Shapiro: But I think you have to ask why we were ever there in the first place and you have to look at the statute in California. You can talk to one of your colleagues in California, Senator Steve Peace, who was one of the architects of the bill in California, and he will tell you that he did not and the builders of that legislation did not intend for there to be competition for residential customers during the transition. The way they constructed the stranded cost charge clearly created no ability for us to come in and provide sufficient value for customers to want to switch. We learned a very tough lesson, trying to be a first mover in a marketplace, that policy-makers really didn't intend for there to be competition. We made the decision, for the time being, to pull back because we just didn't see the response in the marketplace.

Mr Conway: That is a helpful answer, for which I thank you.

The Chair: On that note, I must close. Mr Shapiro, on behalf of all the members of the committee I thank you for taking the time to come before us this morning and to share your advice.

ONTARIO NATURAL GAS ASSOCIATION

The Chair: I'd like to now call upon representatives of the Ontario Natural Gas Association. Good morning, welcome to the committee.

Mr Paul Pinnington: Good morning, Madam Chair. My name is Paul Pinnington. My colleagues and I are here today on behalf of the members of the Ontario Natural Gas Association, ONGA, to present our views on the Energy Competition Act.

With me this morning are Fred Hassan, on my immediate right, who is director of strategic planning and a member of the market design committee. On my immediate left is Rudy Riedl, who is the president of Consumers' Gas and a member of the minister's transition team. On my far left is Bernie Jones, the president of Blue Apple Consulting and a consultant to ONGA. On my far right is Brian Cappe, the president of EnerShare and a member of ONGA's board of directors.

The Ontario Natural Gas Association, ONGA, is an organization of more than 330 corporations and individual members who make up Ontario's multi-billion dollar natural gas industry. We represent transmission, storage and distribution companies, producers, marketers and brokers, equipment manufacturers and suppliers, professional organizations, contractors and individuals. We are involved in providing natural gas to Ontario's homes and businesses, offering a wide range of cost-effective and environmentally responsible goods and services. Our

members are also increasingly involved in the electricity business. This creates a need for a high level of congruence between the two sectors in terms of marketplace and regulation.

I will now ask Bernie Jones to present a summary of ONGA's views with respect to Bill 35. Our comments have been tabled in a written submission which is in some detail. I believe that submission has been distributed to the members of this panel.

Mr Bernie Jones: Madam Chair, committee members, our submission is clear: The Ontario Natural Gas Association supports Bill 35. This legislation provides a framework for change, but it cannot describe in great detail how the new electricity marketplace will actually function. So while we commend the government for its work to date, much work remains. Many important elements are left to the regulations, as you know.

Our support for this bill is based on our industry's positive experience with more than a decade of competition and less regulation. As you know, deregulation in our industry began in 1985 with the freeing of the price of the natural gas commodity. In 1986 the direct purchase option was introduced, allowing customers to buy their gas supply from someone other than their local gas utility. Since then deregulation has moved forward, increasing the competition for the consumer's energy dollar.

By most measures, deregulation of the natural gas market has been an unqualified success. The price of the natural gas commodity has not risen in real terms over the last decade, and more and more people are choosing the direct purchase option. Today, 50% of natural gas customers buy their gas supply through a broker or marketer. That's quite a transition.

That isn't to say there haven't been problems along the way. Like you, we have been concerned that the business practices of a small minority of brokers may have caused damage to the development of a vibrant, competitive market, not to mention our customers' goodwill towards our industry. We believe that some of these problems stem from legislative obstacles that make it difficult for the customer to compare prices. Our inability to transfer title of natural gas within this province has resulted in complex billing structures which customers find confusing, utilities find cumbersome and brokers find frustrating. Bill 35 would eliminate this legislative impediment and allow existing and new players to develop closer relationships with their customers.

The problem of confusing billing structures was exacerbated by the fact that often there just wasn't enough information available to customers to explain the radical changes that were taking place in our industry. I think all of us in this room at the present time have experienced some of that. As a result, our members launched a number of public awareness campaigns to generate a greater understanding of how individuals can benefit from the choices available to them. Additional education will be required to ensure that customers understand the further unbundling of gas utilities about to take place and the coming changes in the electricity industry. The best way to achieve this customer understanding may well be through

utility bill inserts with the nominal associated costs recovered in rates.

Many of our members are also keen participants in the Ontario Energy Marketers Association, or OEMA, which was established to respond to customer concerns and create a code of conduct and a customer bill of rights. We are enthusiastic about the licensing provisions in Bill 35, and believe that OEMA will be an effective partner as we together strengthen customer protection. You may be aware that the OEB is already engaged in consultations on licensing with stakeholders.

As existing energy service providers broaden their services, new players enter the marketplace and utilities unbundle their retail services from their distribution operations, homeowners will find that they will have a whole new range of home comfort options at better prices. That's our experience.

Natural gas, as you know, is an environmentally preferred energy source for power generation. It results in lower emissions and efficient utilization of energy. Gas distribution companies are exploring opportunities in electricity distribution, and many retailers are enthusiastic about the opportunity to offer their customers both electricity and natural gas services. As such, natural gas and electricity companies are both collaborating with each other and also competing with each other. Thus, as Bill 35 proposes, it makes sense to put both the natural gas and the electricity monopolies under the same regulatory authority, namely the Ontario Energy Board.

1010

It also makes sense to create an even playing field for the competitive businesses of these two vitally important energy industries, whether the companies are publicly or privately owned.

You may gather that we are pleased with the way this legislation has come together. The government has taken a consultative approach, seeking input from all stakeholders along the way. ONGA has been directly involved, as you've learned, in the Market Design Committee, the minister's electricity transition team and the Stakeholders' Alliance for Electricity Competition and Customer Choice, and we believe that this process has served the industry, the government and most important, the consumer, well.

Our key concern, folks, is about what happens after this legislation passes into law. Bill 35 calls for sweeping changes in the energy industry. It sets out in very broad strokes what the new market should look like and gives a rough idea of how it will work. However, as I mentioned earlier, much of the detail will be left to the regulations and we believe that this stage of the process should also be a collaborative process. All stakeholders should have the opportunity to provide input and to stay informed on developments as this legislation is implemented. From our point of view, consultation would help us all ensure that regulation is streamlined and congruent for both the electricity and natural gas sectors.

Our submission makes proposals for further consultations which we believe will help ensure the success of electricity competition. We have suggested that an OEB-

or government-led forum be created to scope out areas where regulation is necessary, where regulation is not necessary and where there could be self-regulation. We need to clarify the rules so as to avoid overregulation and regulatory confusion which would impair the market and would also involve added costs for government and market players.

Another area where the consultative process would be extremely useful is in the development of a fully competitive retail market for electricity. The Market Design Committee does and should play an advisory role in the design of the retail options.

It's our position that retail prices should be determined between knowledgeable and informed consumers and retailers, that consumers should have a choice between fixed-price and variable-price options based on factors such as volume, timing of use, price offer, location and the nature of service, and that the local distribution utilities should offer a standard service until sufficient market competition is in place. We believe that these kinds of issues must be discussed and evaluated through the consultative process.

Beyond the need for continued consultation, there are a number of other recommendations we have put forward in our submission for your consideration, all of which will contribute to more effective competition and greater customer choice and protection. We believe that the independent market operator who will oversee the wholesale market should begin to function as soon as possible. It is vital that it begin to prepare the market rules and put in place bidding and other systems to ensure that the transition to competition in electricity is as smooth as possible.

As the Market Design Committee has already noted, we like many stakeholders are concerned about the possible abuse of market power by the proposed Ontario Electricity Generation Corp. The legislation should allow the revisiting of this issue and keep the door open to possible privatization or separation of Genco's generation capacity. We propose that the Ontario Energy Board be empowered to make recommendations on the best course of action.

We are pleased that the policy intent of this legislation is to establish an equivalent and unbiased taxation level playing field between privately and publicly held utilities. For example, in cases where a municipal electricity utility is sold, all buyers would be subject to transfer tax. Our submission outlines our concern, however, regarding the two-year exemption granted to the future generation and service arms of Ontario Hydro for the payment of this tax. Such preferential treatment would give Ontario Hydro undue market advantage and be contrary to the spirit of an open, competitive marketplace.

We also support the continuation of rural rate assistance, but to avoid complicated and burdensome administration it's our feeling that it should be turned into a straight government-funded subsidy.

Finally, we propose the creation of a single window for environmental approvals, preferably through the OEB, where the approvals will be subject to rigorous evaluation

and public consultation. We would also welcome the inclusion of incentives such as emissions trading and tax deferrals to increase the economic advantages and environmentally responsible operations.

If there is one thing on which stakeholders agree, it is that the status quo is no longer an acceptable option. Energy users, both large and small, should be able to choose their energy service supplier and take advantage of competitive prices and options.

Energy providers want to spread their wings. The global marketplace applies to the energy industry as well. With deregulation sweeping the continent and the rest of the world, our energy service companies want to compete to provide the most innovative and cost-effective services available and to create jobs here in Ontario. Our challenge, then, is to create an energy industry that follows through on its promise of low-cost energy choices. We need a marketplace where consumers are well-informed and to help feed the competitive spirit, where regulation assures consumer protection and fosters innovation and where environmental protection is primary and itself becomes a competitive force.

As far as the Ontario natural gas industry is concerned, this legislation couldn't have come a moment too soon. It is in the right direction, it is timely and it has broad stakeholder support. We look forward to participating in the public debate as we go forward together and would now be happy to answer any of your questions. Thank you.

The Chair: Thank you very much. We have five minutes for each caucus. We begin with the government caucus.

Mrs Johns: Am I the only one who wants to ask questions?

The Chair: So far.

Mrs Johns: Thank you very much. I appreciate your time this morning. You made a good presentation to us.

I'm not sure if you touched on it this morning, but I have heard some comments, I suppose because Rudy sits on one of the same committees as I do, about your support for the payments in lieu of income tax for all companies, for the level playing field.

I'm concerned. We've heard a lot of talk and I want to confirm or have you discuss for us today whether you think that will be beneficial or non-beneficial to the consumers in the long run or if that will affect the consumers and how that will affect the marketplace.

Mr Rudy Riedl: It is our belief that those payments in lieu of taxes be put in place because electric distributors will be put on the same footing as other utilities, and making the conditions of conducting business the same for both privately and publicly owned entities would certainly ensure that there is a good degree of competition in the marketplace, that no avenues would be closed to public-private partnerships and that the market discipline would be imposed on all participants. For those reasons we would support that those payments in lieu of taxes be put in place.

Mrs Johns: I haven't thought about the answer, so it's always dangerous to ask this question, but Mr Conway has been probing for a long time the dominance that Servco might have as opposed to what Genco might have. It would seem to me that because some of you people work as distributors and transmitters, you might have a comment on the Servco business and the dominance. Do you have a comment on that? Do you think it's too dominant or do you think it is something we need to be concerned about? If you're prepared to share that you might enter into the marketing competition of Servco, I'd love to hear that too.

Mr Riedl: I think all potential competitors should be given an equal opportunity to enter the marketplace. There is always the danger, if you have a dominant player in the marketplace and the conditions are such that the barriers to entry are too high, that true competition would not evolve. That is one of the concerns about the market power of the successor companies of Ontario Hydro, especially due to the proposal that for a period of time the transfer tax when MEUs are consolidated and/or taken over by Servco, there would be a window, a holiday, on that tax for Servco. I think that would create an unacceptable barrier to entry of other participants. I think there is always a concern of too much vertical integration. I think that if Servco had a dominant position, it would be to the detriment of the marketplace.

Mrs Johns: Of course, there will be municipal electric utilities in there too with a larger range of customers.

One of the things I am struck with in the gas industry is that the people out there, maybe in a lot of cases, have not had enough information to make good consumer choices. Today in your presentation you talked about informing the consumers. You would have a lot of experience in this now after being at this for a while and you've done some things well and some things horribly. I guess from that standpoint, could you tell us, if you were going to enter into some kind of a customer program informing consumers, exactly what you would recommend that we would do.

1020

Mr Brian Cappe: I would hope that there would be put in place over the next period of time for a number of years, in fact starting as soon as possible, proper information going from the MEUs and from Ontario Hydro to the end users fairly explaining the changes that are going to be occurring. We have to be conscious that any proponent of information — and it has to go out to everybody all the time. The information that goes out has to be explained to the consumer, the changes of what is going to be, the differences of the gas experience and the electricity experience and in particular the concept of licensing. One thing we have to recognize, very important in communication, is the fact that everybody will be licensed and bonded to market the commodity. Under this basis we're going to have a proper playing field.

I think the communication has to go out slowly, continuously building on the fact that 2000 is coming and everybody will have choice and everybody should have

fair and proper choice. I think it should be subsidized through the rate base and it should be on a continuous program with a group of stakeholders coordinating the information that goes out.

The Chair: Thank you. To the official opposition.

Mr Conway: I think Ms Johns makes a good point about consumer education. It is going to be central to getting good information in the hands of end users. That's one of the reasons why I am really frustrated about the situation I find myself in, because at the general level there is no more important piece of information that I as a consumer and legislator need to have than what is this stranded debt, how big is it, how many billions of dollars is it, and of equal importance, how does it get apportioned across the category of ratepayers and with what impact does that land on rates? I'm being asked to sign on to something here as a consumer, legislator, without having that information. I tell you I hope we get it. I'm very anxious to get it because it's billions of dollars that will have an impact on rates, which is really what I care about. I hope and expect that competition down the road is going to give me a benefit, but boy, I'm from Missouri, and since Ontario Hydro is involved in this, I want some details; I want some numbers.

I never thought when this process began that we were going to end up with the kind of Servco that Ron Osborne has in mind. I thought what we would get at the distribution end, where I think we all agree there have to be rationalizations — there will be fewer distributors doing more interesting things, but I never thought in my wildest dreams that the rationalization was going to occur to the benefit of Ontario Hydro retail. I thought what we would get, particularly in southern Ontario, was fewer numbers of larger distributors, some of which, like in Cornwall, are going to be private. But I heard in this building three days ago that we're going to have an aggressive, expanding Ontario Hydro retail company and I am concerned that that's going to cause a problem in trying to get some of the efficiencies at the distribution end that we all want. Am I wrong in that worry?

Mr Riedl: There are two questions here. One is about how to explain the stranded debt, and perhaps Mr Hassan could answer that, and I will handle the other one that you asked.

Mr Fred Hassan: I'll just relate it quite quickly to the natural gas experience. We had what could have been called a stranded debt under top gas, and the top gas was dealt with very effectively by the gas industry. Generally consumers need not know what was included in the actual burner tip price because of the way it was handled. There was a fairly substantial amount of money owed. As a result of the federal-provincial agreements on natural gas pricing there was an agreement that there would be a top gas charge. Old gas, I believe the number 20 cents a GJ was the amount that was paid for purchases under those contracts. New gas that flowed was phased in over a three-year period at nine, eight and seven cents. That was included in the wholesale price and flowed through the utility's weighted average cost of gas to the consumer. Net

of all those stranded debt charges were all of the efficiencies that I think you heard about this morning. There have been efficiencies at the distribution level on the gas side, there have been efficiencies on the Trans-Canada system, and I think, as indicated by Mr Jones and in the charts by Enron, you will see that on a real-cost basis prices have been relatively flat and on a deflated basis they've declined quite substantially.

Mr Conway: My concern for the residential electricity customer is simply this, particularly over the next two to five years: I think after about a five-year period we end up as a province with more attractive options with more beneficial results for all classes of customers. My worry, to be perfectly frank, is that in the transitional period, from the year 1999 through to about 2003, the residential electricity customer in Ontario is going to get stuck with carrying or paying down a disproportionately large share of whatever that multi-billion dollar stranded debt is.

I have a responsibility as a trustee, surely, for the general public interest to make every reasonable effort to ensure that the millions of residential electricity customers do not get nailed with, hosed for, burdened with a disproportionate share of a multi-billion dollar stranded debt that I am prepared to bet big customers, big, well-resourced industrial and business customers, are going to be able to find ways to offload on to others, most especially the millions of residential customers. That's surely got to be a concern. You're all taxpayers. What should we be doing about that?

Mr Hassan: I think the recommendations that the government has put forward in terms of managing the stranded debt are the appropriate mechanisms.

Mr Conway: But the Market Design Committee, of which some of you are members, tells us that the single biggest thing we need to do is further disaggregate and force a divestiture on Ontario Hydro, without which divestiture we're not going to get those benefits that the millions of residential electricity customers must have if their rates are coming down.

The Chair: We're going to have to move on. We'll go to the NDP caucus.

Mr Lessard: One of the things the government members like to say is that this is enabling legislation and that all the details aren't included in it. As you've correctly pointed out in your news release, the devil is in the details. We as legislators are expected to take a leap of faith here in approving this legislation and taking the government's word that there are going to be benefits for residential consumers as far as rates at some point in the future. But I know for myself and my other NDP colleagues, we remain somewhat skeptical about those assurances.

I wonder whether you think it's imperative that we know some of those details before this legislation is passed, one of them being the stranded debt and the other is the content of the legislation. What is the process going to be here? Do you think that we need those regulations before this legislation is passed?

Mr Riedl: I think these are very critical points in going forward. However, we know one thing: The present

system does not work. This is a step in the direction of creating a new system. I think it would be overly ambitious to anticipate that the enabling legislation would incorporate all the regulations, all the workings of the marketplace in the legislation. I think the route to go is to have the enabling legislation, which would be strategically, directionally correct, and then proceed with public consultation in developing regulations with all stakeholders and have the Ontario Energy Board, which is an independent body, review the public interest and be helpful in the stewardship of developing those regulations. I think that would be a workable. Quite frankly, we don't have all the answers now. Many of those answers will only emerge after we have had some experience with the marketplace, but we are quite confident that it could be done. It worked in our industry, to the tremendous benefit of our customers.

1030

Mr Lessard: I appreciate your suggestion that we exercise caution as we go down this road. I appreciate your suggestion as well to give the Ontario Energy Board some powers in making recommendations and having some overseeing ability with respect to developing regulations.

One of the other things I heard you talk about was that the Ontario Energy Board had some role to play in recommendations with respect to privatization of Hydro assets. Was I correct when I heard that?

Mr Riedl: Yes, that was part of our submission.

Mr Lessard: What is the reason for making that recommendation?

Mr Riedl: The reason is related to my earlier comment that one cannot foresee the future with perfect clarity at any given time. If the enabling legislation takes the first steps, which would not necessarily mean divestiture or privatization but provide a framework under which it could happen under certain circumstances, then the government of the day could rely on the Ontario Energy Board, which is an expert board, to review the public interest issues associated with potential divestiture and privatization and then make recommendations to the government of the day which then could be considered. We see that as a process, rather than prejudging the events into the future.

The Chair: On behalf of the members of the committee, we thank you for coming forward this morning with your advice from the experiences you've learned in your industry. It's very much appreciated.

STAKEHOLDERS' ALLIANCE FOR ELECTRICITY COMPETITION AND CUSTOMER CHOICE

The Chair: I'd like to now call upon representatives of the Green Energy Coalition. Oh sorry, my apologies. I am in error. I'm calling the wrong group. I should be calling the Stakeholders' Alliance for Electricity Competition and Customer Choice. Good morning, gentlemen. Welcome to the committee. I apologize for giving you that little shock

there at the beginning. Please begin by introducing yourselves and your positions for the Hansard record.

Mr Dave McFadden: Good morning. My name is Dave McFadden. I'm chair of the Stakeholders' Alliance for Electricity Competition and Customer Choice. I'm joined here at the table by representatives of three of our member organizations. Ian Cunningham is vice-president and director of policy of the Ontario Chamber of Commerce. The Ontario chamber is one of the founding members of SAECCC. Rod Seiling is president of the Ontario Hotel and Motel Association. Keith Matthews is the general manager of Brampton Hydro. Both Keith and Rod are members of our executive committee.

I'm very pleased to have the opportunity to be here to speak to you today about Bill 35, the Energy Competition Act. The Stakeholders' Alliance congratulates Energy, Science and Technology Minister Jim Wilson and the government for introducing this legislation on schedule, in accordance with the timetable laid out last November in the government's white paper. Once approved, the legislation will result in the creation of a competitive electricity market by the year 2000 — a historic moment and one that will lead to a more positive environment for employment and investment growth in Ontario, as well as improved global competitiveness for Ontario's businesses.

We are pleased that the Legislature moved so expeditiously to give Bill 35 second reading, so that public input could be secured by this committee during the summer adjournment.

At the outset, I would like to comment on the spirit of openness and co-operation which has characterized the process involved with the development of this legislation. We have been very pleased with the co-operative and accessible approach taken by the Minister of Energy, Science and Technology and the staff of both his ministry and the Ministry of Finance. The government has always been prepared to listen to the concerns of the stakeholder community.

We have also very much appreciated the open and positive relationship the Stakeholders' Alliance has had with Mr Conway, Mr Kwinter and other members of the Liberal caucus.

Prior to his appointment as chair of the Ontario Energy Board, we were pleased with Floyd Laughren's progressive approach in dealing with the issues faced by Ontario Hydro, and we very much enjoy working with him in his new position, which is intimately involved in protecting the consumer interest and ensuring the development of a competitive electricity market in Ontario.

I'd like to take this opportunity to say a few words about the Stakeholders' Alliance. As some of you will know, the Stakeholders' Alliance was founded in October 1996. The alliance is a broad coalition of Ontario Hydro's consumers, representing virtually every sector of our province's economy. Our support base includes the automobile, steel, chemical, forest, mining, equipment and hotel/motel industries, the Municipal Electric Association and a large number of electrical utilities, the Canadian Federation of Independent Business, the Ontario Chamber

of Commerce, the Association of Major Power Consumers in Ontario, the Ontario Natural Gas Association and the Independent Power Producers' Society of Ontario.

The Stakeholders' Alliance is the broadest coalition ever assembled in Canada to advocate electricity industry reform. A complete list of the members of the alliance is at the back of the copies of my remarks that I think all of you have now.

In 1996, the founding members of the Stakeholders' Alliance were concerned that the momentum for constructive change created by the Macdonald committee could be lost and that Ontario would fall even further behind in the rapid shift to competitive markets throughout North America. It was clear that the electricity industry in Ontario had to change and that the status quo was unacceptable.

The founders of the Stakeholders' Alliance were particularly concerned that Ontario Hydro would implement its own vision of a competitive system, which would entail a continuation of its effective monopoly over generation and transmission in Ontario together with an increasing presence in retail electricity markets.

The Stakeholders' Alliance believed that the recommendations of the Macdonald committee report, *A Framework for Competition*, provided a reasonable blueprint for an orderly transition to a competitive market. The Macdonald report provided choice for all customers where practical, ensured that the Ontario Hydro debt and other potential stranded costs would not become a burden on the public purse and respected local concerns.

The goal of the Stakeholders' Alliance has been to drive the focus of the Ontario electricity system from the needs of a large monopoly to the needs of the consumer. This can be most effectively achieved in a competitive, consumer-oriented market.

The alliance believes that the focus in restructuring must be on creating competition and consumer choice in generation and distribution, not on privatization. We believe that the right form or forms of ownership will evolve over time once the competitive structure is in place. Our view was that ownership changes should be done only when they are in the best interests of the stakeholders of the system, namely, consumers.

We would expect that the Ontario electricity system will evolve and restructure as the competitive market takes shape into the next century. With the proposed restructuring, Ontario should again be a place where competitive electricity prices boost economic growth and create jobs.

The Stakeholders' Alliance developed a three-point plan that reflected the philosophy and consensus of our members. These points were: (1) Separate the transmission system, including an independent system operator, from Ontario Hydro's generation assets and establish it under its own governance; (2) set a time frame and establish consistent criteria and requirements for municipal utilities and Ontario Hydro retail, established as a utility under its own governance, to work out the restructuring of local distribution through regional studies; and finally (3) to establish a transition agency independent

of Ontario Hydro with the mandate and authority to effect the changes needed to introduce a competitive market. We argued that these points were fundamental in any move towards competition. The government's white paper in November 1997 met the alliance's fundamental requirements.

1040

How does Bill 35 compare to the alliance's three primary objectives? First, Bill 35 has separated transmission from generation and created an Independent Market Operator, as recommended. Second, the bill has set out a timetable and framework for restructuring the retail distribution sector and municipal utilities, as recommended. Third, the government decided not to create an independent transition agency to introduce a competitive market. However, the Minister of Energy, Science and Technology has structured two entities which provide direct stakeholder involvement in the transition process.

The Electricity Transition Committee, chaired by Mr Wilson and co-chaired by Arthur Kroeger and myself, provides direct, ongoing input to the minister and government officials from senior executives from a broad cross-section of stakeholder organizations. The Market Design Committee, chaired by Professor Ron Daniels, brings together a very knowledgeable group of people with wide experience in the electricity industry to assist in the development of market rules for the newly structured electricity market. The stakeholder organizations have been pleased with the level of input they have had through both of these committees, as well as through numerous meetings with government officials in recent months.

Bill 35 puts in place the essential building blocks for the development of a competitive electricity market. Individual member organizations of the alliance have made or will make submissions to the committee dealing with concerns about various aspects of the bill. We have encouraged this, so that members of the committee are aware of the full range of views of the various consumer groupings throughout the province.

Ontario needs a competitive electricity market. We support the Energy Competition Act and urge members of this committee to ensure that the bill is enacted with any appropriate amendments at the earliest possible date.

The Chair: Thank you very much. We have about six minutes for questioning from each caucus. We'll begin with the Liberal caucus.

Mr Gerry Phillips (Scarborough-Agincourt): I want to focus on the generation side for a minute and then my colleague Mr Conway has a question. An essential element of this bill is the retention by Ontario Hydro of essentially all of the generating capacity. We're told one of the reasons for that is the need for a major Ontario player in the generation side to compete internationally and certainly North American. There's some substantial risk in that, in that the book value of those is around \$26 billion. There's a substantial amount of the stranded debt that I suspect they'll pick up. I gather that as new private sector generation comes on board, Ontario Hydro's share of the market declines and I think perhaps puts at risk

some of that investment. You people are experts in this. Are you supportive of the model that we see before us of Ontario Hydro retaining 100% of the generation or should we consider some modification on that?

Mr McFadden: As I've indicated, we support the proposal put out in the legislation to leave generation as one unit. It's safe to say, and you've already heard it from different individual members of our organization, that a majority of the Stakeholders' Alliance probably would be in favour of some further restructuring. However, we think that the current proposal that's named in the legislation is the right move now. We can live with that. We think the approach taken in the legislation in terms of creating an Independent Market Operator which will ensure guaranteed access to the system is a good move to protect consumer interest. The separation of transmission from generation was absolutely essential and was a *sine qua non* to any reform.

What we think should be done at this point in time is: Let's get going. Let's see how the market develops here. Let's see how things work with the revamped and repowered Ontario Energy Board that would be there to protect the consumer interest.

If it should happen in the years to come that, for example, we're not getting a competitive market or that consumers are not getting the benefit of competitive power prices, then the government of the day at that time should take steps to maybe look at some further restructuring. But at this point we think it's a reasonable proposal. It should be enacted and then let's work and see how it actually turns out in practice for the consumers of Ontario.

Mr Conway: Thank you very much. It's good to see you folks. A very good brief, although I would, and for no other reason than to protect the sainted memory of Adam Beck, tell you that on page 3 you say, "Stakeholders' Alliance is the broadest coalition ever assembled in Canada to advocate for electricity industry reform." Compared to the Beck crowd, David, you're still a pretty minor league group of players, important, however, and I think offering very good advice.

The problem I've got is essentially the problem that my colleague Mr Phillips mentioned. All of us want competition — I think that is clear — and the government enjoys a broad base of bipartisan support for the goal of competition and the benefits we expect that competition to bring. But what are we to do when we see the government's own special advisory committee saying that the single biggest and most important thing we need to do as a Legislature and as a government to reform this sector, to get the benefits of electricity is to unbundle, to disaggregate, to pull apart, at least into separate, competing generating units, what is now to be Genco?

I'm really concerned because we're dealing with Hydro. It's Ontario Hydro. I've been down this road, you've been down this road before. I have this terrible feeling that while Hydro has the government and all of the rest of us singing out of this hymn book about the pleasures and the opportunities of competition, they're sitting behind the curtain just chuckling all the way,

saying: "Boy, we've got them saying one thing while we do the same old thing. Keep the power in our hands," literally.

I just ask you again, is there not a fundamental contradiction between wanting the benefits of competition, on the one hand, and ignoring advice that says you're not going to get the benefits of that competition in generation without further unbundling, disaggregating, breaking up Ontario Hydro generation — without maybe changing the ownership — into at least five or six competitive generation units?

Mr McFadden: Mr Conway, your point's well taken. I don't know of anybody who's more of a student of the history of Ontario Hydro. Mr Beck might have got upset about some of this, I don't know.

Mr Conway: But you're so much more polite and so much less ruthless than Mr Beck. That's why it's a pleasure to have you here.

Mr McFadden: I don't intend to run Ontario Hydro.

Mr Conway: That's what Mr Beck always said. He was just about public power and God's work.

Mr McFadden: The Market Design Committee is wrestling with this. We've spent time with the Market Design Committee and I think our feeling right now is that the Market Design Committee had set out in its second interim report an approach to develop what effectively would be a rules-based competitive market structure. We're not going to, in effect, have Genco broken up so you have competition from producing units.

What is happening is that we're going to create a regulatory framework and rules to get us there. Obviously, it means fairly difficult negotiations right now between Genco and the government of how they're going to have vesting contracts and all these other things that are going to have to be in place. What we're hoping, obviously, is that with the rules that are put in place and with the protections with the Independent Market Operator and the protections in place with the Ontario Energy Board, legitimate other competitors will build up in Ontario to compete with the generating company or imports will come in from other jurisdictions, be it from Quebec or from the United States, again to create competition.

As I mentioned in answer to Mr Phillips' question, I think this may have to be revisited, as I think anything else in this act will need to be revisited in the years ahead. This is a first crack, and if you look at what's happened everywhere in the world, you put in place a market and you always have to be constantly looking at it because things go wrong that you don't anticipate, new market conditions develop, things don't turn out the way you want. I think there's going to be a need for a constant review of this legislation and how it's developing to ensure that we have a competitive electricity market and to ensure that the consumers benefit from it.

I don't think there's a total answer. I think the Market Design Committee has come up with a scheme to try to deal with this, to mitigate the power of Genco. If it turns out that that's not adequate, I would hope that the government of the day at some future time would deal with

that appropriately. I can tell you the consumer groups are going to be there and they're going to be talking about it and they're going to be lobbying, as I'm sure the members of the Legislature will be too.

1050

Ms Marilyn Churley (Riverdale): Thank you very much for coming to present to us this morning and for your compliments to our past colleague, Floyd Laughren. He is indeed a pleasure to work with and, unless his views have changed, has never been supportive of privatization of Hydro.

I note that on page 4 you mention and you talked about the need down the road for perhaps more structuring. You say specifically that at this time you believe it must be on competition and consumer choice in generation and distribution, not on privatization. But you go on to say, "Our view was that ownership changes should be done only when they are in the best interests of the stakeholders, the customers." You said, in answer to Mr Conway and Mr Phillips, about the need in the future for restructuring, which I would agree with. We are going on a huge leap of faith here. I expect you would agree with that comment.

I would like to follow up on your views on privatization. Would you believe in selling off Niagara Falls at some point down the road? Do you think we should be very clear that we don't want to be going in that privatization direction at this point and not leave that door open? Who should decide these things?

Mr McFadden: I assume when you refer to Niagara Falls, you're talking about the power plant and not the —

Ms Churley: No, I'm talking about the water, the falls.

Mr McFadden: We could sell it to Disney. They could set up a Disneyland over there.

Ms Churley: Not the casino, though. We'll leave that out of it.

Mr McFadden: What will undoubtedly happen is that the market will develop and some of these decisions will become more logical and clearer as we move along the road. The government's white paper talked, for example, about partnerships. I know that PWU has talked about partnerships in relation to Bruce, for example. The Market Design Committee has talked about leasing generation.

One of the things we should probably do is keep an open mind on how best to do this. The objective here is not structure and the philosophy of structure. Our objective here is to develop something that works for the consumer benefit and works for the benefit of the people of the province. Certainly we're not advocating getting out of regulation and ensuring that's done.

Our feeling is that, in effect, over the next five, 10, 15 years you're going to see restructuring. Whether you wind up with increased level of private investment in power, who knows? Whether it's in the form of partnerships, whether it's in the form of leasing, who knows? You may have a mixture of public-private. Some may be publicly owned corporations competing with privately owned. I don't know how it will go.

You can look at, for example, the airline industry, where we had a public entity, Air Canada, and a private entity, Canadian. Eventually, they both became private. Petro-Canada followed a similar kind of route. It was publicly owned and gradually became privately owned. If you look at those examples, Air Canada continues to provide an excellent service for Canadians and so does Petro-Canada. They're both Canadian entities on the world market. I think we're going to have to see how the market develops. It may be a long time before we see the results of all this.

Ms Churley: I don't think Mr Beck would enjoy having his great creation compared to an airline. Come on.

Mr McFadden: I think Air Canada is a very good airline to fly on to make it to Thunder Bay.

Mr Lessard: You say that this is a process that needs to be continually reviewed. One of the things that I'm not sure we can review or change is the amount of the stranded debt. It's very important, whatever that number is, that it be determined, that it be fixed and that it can't be changed at some point in the future, because of the uncertainty that would cause in the market. Have you given any thought to what would happen in the future if we guess wrong as to the amount of the stranded debt? If it's too high or if it's too low, what do you see as the ramifications of that?

Mr McFadden: I guess there are two things. You touched on a very, very vital issue: what's happening to stranded debt and the effect it'll have on pricing. First of all, I have been to I don't know how many different seminars and speeches and briefings on stranded debt. I assume members of this committee have been to similar things. Your mind boggles when you listen to all the financial wizards and financial advisers who are involved with this. The province is very well served by the people in the Ministry of Finance. I think they're really trying to wrestle with this thing to try to come up with a proper answer.

That, to some extent, may evolve with time as well, in this sense: that we may find that as things evolve, you may not have as much stranded debt as you thought, because some companies could perform better. As well, one of the things we are concerned about is how you approach stranded debt. There was a proposal around a while ago, and it's mentioned in fact in the discussion paper, that some people had proposed a rapid paydown of the debt. If we get involved in some sort of accelerated payment plan, just as you would if you had a mortgage on your home, you would find the prices go up. The position of Stakeholders' Alliance is that there's no reason for any increases in power prices resulting from stranded debt. It's a question of over what period of time you pay this debt off.

As far as I know, we're not in default of anything. There's no pressure from the market to suddenly pay all this off in this next two or three years. If we just pay off the debt in the ordinary course, there should be no reason for it to impact on prices. We already have heard that 40-some-odd per cent of our current hydro bills are made up

of debt payments, payment on account of interest or principal. There's no reason for that to go up. The debt's there and it'll be paid off. There should be no additional debt come to light. Presumably, if we handle it right and pay it off over a period of time and we don't get into any kind of an accelerated payment program, I can't see why there'd be any increase in prices.

I can tell you one thing. The Stakeholders' Alliance position would be this: If they were to bring in some sort of accelerated debt payment program and they'd cause an increase in consumer prices, I think the support for that proposal would be very slim. We're interested to hear what's going to happen. We're very optimistic, though, that in terms of prices the stranded debt should have little or no effect on prices. We're hoping that it will basically be a wash from the current situation.

Mr Steve Gilchrist (Scarborough East): Thank you, Mr McFadden, and your colleagues for coming before us here today. I'd like to touch on two points, if I could, arising, in one case, briefly in your presentation; the other a bit more extensively, but I'd like to explore it a little further.

As you're aware, one of the government's intentions in bringing forward this piece of legislation was another stimulus to jobs and investment in Ontario. I know SAECCC had a number of things to say on that subject before. We were up in Sudbury yesterday. The Ontario Mining Association said in their brief that this bill is an initiative which can help mineral producers in this province become more competitive in the international marketplace. So it's not just domestic benefits but the ability for our companies to lever lower costs into something far greater reaching. I wonder if you would expand on SAECCC's position vis-à-vis the job creation opportunities attendant to this bill.

Mr McFadden: The fact is that if you look at our membership base, you will see that it's all the major power consumers: the automotive industry, the steel industry, the mining industry, the forest products industry, and you take from that the tens of thousands of Ontarians who work in those industries. Every one of those industry groupings is worried about power prices in Ontario. From the mid-1980s to 1995, power prices jumped 60% in Ontario. That is putting all those industries at risk in terms of competition.

Every major power consumer is urging the government, either individually or through the alliance, to get on with this. Let's get a competitive electricity market going, because we're facing — all you have to do is read what's been happening the last few months in terms of the Asian crisis and everything else. There are very severe pressures coming on Ontario and increasing on many of these industries that are sensitive to energy prices. We're very, very concerned that we move as rapidly as possible to competitive electricity prices, and we think it's going to be important, as a result of that, for the government to constantly be reviewing this to ensure that we achieve that. After all, in many ways the power system is a trusteeship for the people. It's very important that our

electricity system doesn't become a drag on the job creators in our society, and that's what it's become over the last number of years.

1100

Mr Gilchrist: I appreciate that. The other point I'd like to have you touch on is that Ms Churley mentioned that following through on this bill would take a leap of faith. I would suggest it's more of a leap to catch up with everyone else.

We love charts. I'm glad Enron has left us with a couple more today. Here's a map of the United States. You may be able to see it from there. A grand total of one of the 50 states has not done what we're proposing to do in this bill, and many Canadians provinces have as well.

I know that on SAECCC there are a number of MEUs, municipal electric utilities. We had an interesting admission yesterday, also in Sudbury, from one of the more outspoken MEUs, North Bay Hydro. Their general manager admitted, "There's no question that the number of MEUs in this province is an anachronism." When we're talking about competition and we're talking about addressing the concerns that the Liberals keep bringing up about Hydro's power when it evolves into Genco, have you taken a position on whether the consolidation of MEUs would provide for greater competition among domestic suppliers and the ability to lever purchases from new co-gen plants and that sort of thing? Is that an important part of this equation?

Mr McFadden: As you know, in our three-point plan we did urge the municipal utilities to be permitted to consolidate, to rearrange their boundaries and so on. I can tell you that the MEA and the municipal utilities I've met are all anxious to get on with a sensible restructuring. Everybody realizes that there are some major economies that can take place if that happens.

Our feeling about this is that this legislation permits that to happen. It permits the municipal utilities to incorporate under the Business Corporations Act, which will then bring into it a real drive and an approach to efficiencies that will be desirable. It will also facilitate amalgamations. The people I meet from the municipal electric sector — many of the general managers and presidents are very progressive people and are looking at ways to restructure to the benefit of their consumer. Before, it was very difficult. This legislation will facilitate that.

Mr Gilchrist: As a final point, then, just looking at the ability to amalgamate, this is perhaps more of an accounting question than anything else. There is a bit of a dispute going on about the fair price that should be charged. As in any other business transaction, would it be appropriate for Hydro to be selling off its assets at market value, at the price the assets are worth in a fair market? Alternatively, do you depreciate that, knowing it would increase the stranded debt? The MEUs are taking the position that depreciated book value should be the price they get to buy it at. They are the instant beneficiaries of that difference in price. But, in fairness, we had the MEA District 9 representative yesterday say that she personally

believed that market value is fair because it would pay down the debt more appropriately.

Mr McFadden: Our alliance hasn't really studied how you're going to value municipal utilities. This surely is an issue that the municipal governments are going to have to make a decision on, presumably. The legislation confirms and probably clears up a point on that issue, but the municipalities are going to have to decide what they want to value these assets at. If they are prepared to accept the idea that a very key asset of the municipality is worth book value —

Mr Gilchrist: I was thinking more of Ontario Hydro's assets, if they are sold to —

Mr McFadden: Ontario Hydro's assets. That's another issue. If I misunderstood — there were many questions you raised. My view, as a taxpayer and a citizen, is that if Ontario Hydro were up for sale, or Genco or Servco, it should be sold at fair market value and the market will decide that at an appropriate time.

If you look at the valuations worldwide, where various countries have made available for investment their power sector, the amount of money that has come into the government has been huge. In fact, it's often been in excess of what they anticipated. I have no reason to believe, if you were to do that here, that that wouldn't happen, but obviously you would not sell Genco or Servco at less than its market value; I think the taxpayer would have a legitimate complaint. But I assume that's a moot point, since that's not happening.

The Chair: On that note we must end this section. Gentlemen, on behalf of the members of this committee, we thank you for coming before us this morning. We appreciate your ideas and your suggestions.

GREEN ENERGY COALITION

The Chair: Now calling representatives of Green Energy Coalition, please. Good morning and welcome. Please make yourselves comfortable. As I'm sure you know, you have 30 minutes for presentation time. Please begin by introducing yourselves for Hansard.

Ms Christine Elwell: Good morning. Thank you very much. My name is Christine Elwell and this is my colleague Greg Allen. We're here this morning to file a submission on behalf of the Green Energy Coalition. We thank the committee very much for this opportunity to address you on the urgent matters before you today.

We have a few extra copies of our brief if needed. In addition to our brief, we've also filed a number of other documents. We've filed a technical report by the Sierra Club on environmental aspects of the Ontario Energy Competition Act, which reviews in more detail and gives more background on the particulars. We've also filed a renewable energies cost and capacity fact sheet. They're our best numbers, based on government statistics, on what the costs are, and the members can judge for themselves how affordable and competitive they are. Finally, we've also filed a copy of an overhead called Environmental

Portfolio Disclosure: Consumer and Air Quality Protection in Deregulated Electricity Markets.

I would take instructions from you, Madam Chair. We do have available the slide presentation. It's basically an indication of what US producers are going to offer in the competitive market for green energy. I think it would be very insightful for the committee to see what the competition is up to. It's a very short presentation. We can judge at the end, depending on our time, if there's time to actually show it. We need a minute or two to set up. Otherwise, we have made a photocopy available for you in your package.

As you're thinking about the environmental aspects of the Energy Competition Act, we'd like to remind members of their duty and the province's duty to avoid the 1,800 premature deaths every year of our citizens related to air pollution. In your considerations, you also have a duty to avoid harm to our neighbours such as Quebec, and our unnecessary demands for their land and water resources and flooding of their terrestrial space. In addition, we have concerns about air quality of our neighbours to the south, for example, Vermont and Massachusetts, that are directly downwind of our electricity sources. Indeed, the duty you have today is a global one. Your duty needs to take into account avoiding harm with respect to global warming and whether this legislation helps or hinders efforts to mitigate climate change.

So there was the big picture, but indeed we have a number of specific recommendations we'd like to make to improve the bill.

I would like to speak to the issue of environmental and consumer disclosure, and my colleague Greg Allen will speak to the issue of stranded debt and renewable standard portfolio. In summary, we would suggest that the committee recommend amendments in two main areas.

1110

The first main point is to capture the many laudable promises of environmental protection that this government has set out in this bill. Our concern is to ground those promises in the legislation itself. Our recommendations for a green energy strategy in Ontario would include a system benefits charge for energy efficiency and conservation. We would suggest that this modest charge could be levied by the independent market operator for transmission grid access, in section 17 of the act; in the OEB's powers to levy a fee in relationship to distribution, in section 76; as well as approval of rates, in section 77.

Moreover, we would recommend that any adjustments made to support these absolutely necessary public programs ought to be adjusted in any competition transition charge that may be necessary for stranded debt payment, anything that might favour green power producers and consumers, any cost flow recovery from renewable portfolio standard or other public energy conservation programs at the municipal level. But to be able to get the bureaucracy to recognize these initiatives, I entreat you that it needs to be in the act, whether by modifying the fee-levying power in terms of charges, rates or fees, but

also with respect to licensing. This is the second main area.

To ensure a 10% renewable standard portfolio, essential emission and environmental performance requirements, as well as consumer disclosure, we would recommend that section 69 of the Ontario Energy Board Act be amended so it would roll in, would recognize, would incorporate by reference those environmental measures as a condition of OEB licensing; and furthermore, that that licensing be able to be enforced the same way as any other breaches of the Electricity Act or the OEB Act, and that's by suspension, revocation. To say, yes we have environmental measures but we have no enforcement measures is frankly just dropping the ball.

Finally, we would recommend in particular that section 87, which outlines and enables the Ministry of the Environment to establish a number of regulations concerning emission and environmental performance requirements, also be incorporated by reference in OEB licensing in section 69.

With that very broad sweep, I'd like to turn to my colleague Greg Allen, who will address stranded debt and renewable standard portfolio.

Mr Greg Allen: Hello. I'll begin by just giving a brief background. I have been 25 years at the issue of moving Ontario and indeed all our energy sectors towards a sustainable energy future. I have been active as an engineer in the promotion and development of renewable energy technologies and energy efficiency for that time period. Over those 25 years, the waves of hope and disappointment have washed over me and colleagues repeatedly from government to government.

Underlying those periods of what appeared to be breakthroughs in government policy and direction has been the dominance of Ontario Hydro policy that overrides those interests expressed by the population. We, as a result, have incurred this enormous debt, we have been subject to the poisoning of our air with the coal emissions, we have been saddled with a large inventory of radioactive waste for ourselves and children to contend with, and we have been snubbed repeatedly for daring to make a critique of that strategy.

I believe that the premise of this legislation, to renew the electrical sector in Ontario through competition, is absolutely compromised if the way we go about determining the stranded debt calculation makes an implicit assumption that the massive investment necessary to rehabilitate the nuclear reactors is within that calculation. If we do that, then it is business as usual at Ontario Hydro, where policy is directed by administration there and not by the province.

The nuclear assets optimization plan is a \$22-billion investment by the crown corporation, which will still bear impact on the taxpayers and ratepayers of the province. In fact, the creation of a situation where we can continue to incur those debts isn't a matter of levelling the playing field but of levelling the other players on the field.

The way I perceive it is akin to that we've bought a lemon and the dealership that gave it to us has had our

credit card. We keep being told that just one more overhaul will solve the problem and we will have many kilometres to go on this one, and bitter experience has proven otherwise. It's time for the people who should be in control, ie, the government of this province, to pull the plug on this money pit.

The irony of the Ontario situation is that restructuring has been driven by the crisis of electricity costs and the non-performance of nuclear reactors worldwide. It has driven the US initiatives. If it becomes the instrument by which Ontario Hydro/Genco has another opportunity to make one more massive investment in that direction, I'm afraid that the prospects of a successful reduction of costs as a result of a competitive marketplace will have been vanquished.

The issue of not only allocation of stranded debt but the decommissioning costs and the addressing of the high-level waste problem should be accrued by the generators, ie, Genco. As we continue to operate the nuclear reactors, we are accruing on a continuous basis more waste and more cost in terms of its disposal. Those should be explicitly accounted in the decisions on when to pull the plug.

Others, including Karl Wahl, the general manager of Mississauga Hydro, have noted that the nuclear reactivation will put a wet blanket on the prospect of investors getting interested in producing the more efficient and less costly generation opportunities.

To that end, there are two recommendations in our report: that the successor Ontario Hydro generator service as much of the stranded and incurred debt as possible in order to avoid unfair competition with new generators, in particular green power producers; and secondly, that a public fund be established by Ontario Hydro, as part of its assumption of the stranded debt, to ensure that Ontario's nuclear power plants are properly decommissioned and insured against risk, so that incorrect nuclear energy prices can no longer unfairly compete with more economic and environmentally friendly sources.

The second item I would like to address is one that is being widely advocated — in fact, I recently heard that Ontario Hydro may be a proponent of such — and that is the renewable portfolio standard, which is commonplace in the jurisdictions in the US and not yet embodied in the act. I urge that it be taken into consideration and a form included, with some articulation, in the act.

The reasons for having a renewable portfolio standard are many. We have the fundamental issue of how we are going to move, over the next generation, our energy usages to ones that are sustainable and that reverse the pattern of ever-increasing contaminant loading on the environment. As such, we need to have a public policy that advocates green power in the province. Secondly, we need to recognize that other countries are enjoying a very prosperous renewable energy industry. I'll cite Denmark, for example, that has been early on in wind power generation. It is now their second-largest exporting industry. We will fall behind in Ontario in the competitive

market for green power if we do not have in place similar regulations to those south of the border.

1120

We also need to recognize that the placing of all one's eggs in one basket, the pattern of the past, has got us into a lot of hot water. We can quite surely revisit that if we have a predominant dependency on single fossil fuels, such as conversion over to natural gas sources and the price instability that we can imagine occurring. A diversity of generation in the province makes the system more robust and hedges against future cost increases.

There are other motivating factors, but I would just like to indicate that renewables are presently capable of competing in many sectors. The application of some of these technologies is already in place, such as the capture of methane off of landfill sites to cogenerate power and heat. Wind technology is closing. In fact, a project I'm personally involved with in the city of Toronto is to establish a net billing program: collective ownership of a wind generation facility for approximately 300 households. We can open the floodgates to innovative means of financing from the citizenry and the private sector for these green power options at competitive rates if there are not access limitations.

I will close on that. I'm sure that there are many questions that I might be able to respond to.

The Chair: Thank you. That leaves us three minutes for questioning from each caucus.

Ms Elwell: If there's no time for the overhead could I just make reference to two pages of this material?

The Chair: It's your choice. If you wish to do the overhead or you want to refer to the material, that's fine.

Ms Elwell: I'll just flag the pages in particular, because I'm very interested in taking your questions and wouldn't want to use your valuable time unwisely. Let me just indicate that all the necessary requirements for a sustainable energy strategy sort of come together under the environmental and consumer disclosure head. Why I say that is because it brings together our needs for energy efficiency, renewables, disclosure and serious emission caps kind of within one mechanism, so it's worth spending some time on it.

The last sheet gives you a checklist of the basic outline of true environmental disclosure for electricity. The absolutely essential thing there is that not only are the emissions indicated according to a benchmark on what the standard is, but also the relative fuel mix. In other words, it would not be appropriate for a marketer to come in and say, "I market green power," if that's 1% of their portfolio and meanwhile, 99% of their portfolio is dirty coal or something. The information to the consumer needs to be about the entire portfolio of the supplier, and this is outlined quite well in this document.

The other page I would flag for members' attention is page 8. This is the electricity emissions benchmark portfolio disclosure. You'll notice it outlines the fuel mix that's being provided to consumers, but it also, and this is very important, outlines the air emissions in terms of a benchmark so that I, as a consumer, can say, "I'll buy

from company A because their NO_x emissions are low," or "I'll buy from company B because it has a lot of solar power." We really need that comparative shopping potential and I would entreat you to look at it very carefully.

With that, Madam Chair, I'll turn it over to any questions members may have.

The Chair: There's time for one brief question and answer from each caucus. We'll begin with the NDP caucus.

Ms Churley: We only have one minute now. I agree that the mistakes made in the past are what got us into what I call heavy water today. Now is the opportunity to build that bridge, and it's going to take some time.

The environmental externalities of burning dirty coal and the billions and billions of dollars that we've put into nuclear power means that at the end of the day we subsidize those particular sources of power. In the past and, believe me, in government, it was frustrating, because of the debt, not having that bridge. That's why, ultimately, I'd like to support this bill.

My question is this: If some of the recommendations you made today aren't put in the bill so that renewable energy will come on stream, unless these things are put in the bill so it's very clear, are you afraid that because of competition you're not going to be able to get in the door even now and that we'll end up continuing on and on with coal and nuclear?

Mr Allen: Yes. I have to say it's with a sinking heart that I perceive, with the rush to put this bill through in the absence of having these safeguards in place, that we will end up making the commitments identical to the commitments we've made in previous years, without any significant change to that arrangement. Simply passing it over to another crown corporation that will make its financial decision somewhat independently of government will, I believe, result in the absence of competitive opportunity. If you invest in a nuclear reactor, those funds are sunk and you must run that equipment, so whatever the price is, it will be undercut by the generator.

Mr Galt: Thank you for the presentation. I've glanced over your recommendations and I can assure you that the government is empathetic to most, if not all, of the points you're making. As I'm sure you're aware, there's extensive consultation going on. I hope you will be, or are, part of those consultations.

I'm interested in your comments about pulling the plug on Ontario Hydro. There might be a lot of people empathetic to that kind of thinking. At the same time, you also talked about the overhaul or fixing up and not believing the direction. I would suggest that what this bill is doing is really redesigning a new model and heading in a very new direction.

The concern you mentioned earlier in connection with systems charges to increase the use of green energy: Yes, a suggestion that should be considered. I bring to your attention that our first presenter this morning, from the Canadian Association of Energy Service Companies, concerned about energy efficiency, was pleading with us

not to bring in any financial incentives one way or another. We're bringing in consumer choice, and I think you're on record as saying you support the government's idea of emission disclosure, emission caps, emission reduction trading, performance standards provision, all things which should encourage green energy and green power production.

I'm curious about what you group as green energy. There are difficulties with even wind power and solar power; they take up acreage of forest or agricultural land. We heard the other day that hydraulic generators create some problems too. Do you consider hydraulic generation as green power?

Ms Elwell: Yes, small scale. Thank you for that question. May I suggest to the committee that this issue of what is green power is really holding up a lot of our progress here unnecessarily. I think you should just decide it. Just go ahead and define it. Everyone will live with it. But not knowing is not good for investors, not good for anyone. Ontario has a comparative advantage in green power and hydro power, if we define it, say, as something more than a 20% run of river. In other words, do something different than the eco logo recommendation. I would entreat the Market Design Committee to come up with and negotiate something. At this point, it's just silliness that we haven't been able to agree. We're not stuck to any one position.

May I also address your other question about energy service companies? It's kind of like an end-of-pipe solution. If we can avoid unnecessary expansions at the front end — yes, energy service companies have their role to play, but the generators need to be onside and provided with some sort of incentive. The market's there to provide their shareholders with profits, and that's based on selling the most amount of energy at the highest possible cost. That's what markets are supposed to do. Therefore, it won't address the public interest needs of making sure energy efficiency is practised, making sure there's some conservation.

But the generators need to be onside and provided with some sort of incentive, because the market's there to provide their shareholders with profits and that's based on selling the most amount of energy at the highest possible cost. That's what markets are supposed to do. Therefore, it won't address the public interest needs of making sure energy efficiency is practised, making sure there's some conservation.

1130

I give you the analogy of land development. When a government makes a land deal, they'll often set aside 5% or 10% of the space for public community centres, schools, whatever. We're asking for that same public space for a renewable standard portfolio to ensure that the uncompetitive pricing signals in the market are compensated for by a public investment in renewables and energy efficiency.

Mr Allen: If I could add, system benefits charges are not to interfere with the markets where ESCOs can actually perform, but rather to examine strategically

where markets are dysfunctional, such as the split incentives of landlord and tenants, such as market transformation. I give an example in the gas sector where take-up of high-efficiency gas was not happening for historical reasons and because the technology wasn't readily available to the dealers etc. So a short three-year downcharge on the high-efficiency technology transformed the marketplace and it was totally lifted after that point and forever remains a beneficial move by the community.

Mr Phillips: Time only permits one question so I'll focus a little bit on the stranded debt issue, because your recommendation, as I interpret it, is that there will be debt assigned to the generating company and then there will be a portion of the stranded debt assigned to the generating company, Genco. Your recommendation is that as much as possible be assigned to Genco.

My question is, if that were to happen across the board, even some of what you would regard or I would regard as the green generating capacity of Hydro would be unfairly burdened and would make them in some respect non-competitive with other sources that will come down the road. By the way, as an aside, previous presenters have said that Hydro is generating enough to pay off the debt right now. I just remind us that in the last two years they couldn't pay off the debt and they've had to put in \$8 billion worth of write-offs, some in interest costs, some to buy future power, just to keep from raising the rates. But my question is, if we take recommendation 6 of yours, is there not the possibility that we penalize Hydro's ability to compete even on its green generation?

Mr Allen: Of course there is a contradiction when you have a crown corporation where the determination of what is competitive for the utility is based on debt allocation and also in terms of the competition transition charges that may be imposed. You're kind of rigging the playing field so that Genco can actually be a competitive entity in it, and I understand the reasons for doing that. It's as much political that we're not selling off the assets as from any arguable benefit to the community.

The essence of the issue is in the determination of what is a stranded debt in this case. If it assumes that it is necessary to make those investments of, as I mentioned, the \$22-billion overhaul of the nuclear equipment, then there is no market determination of whether that was a good or bad choice. It is a determination that's made by the finance department in this government as to whether those investments are going to be available for Genco to make. We are just deferring that very hard question as to when to pull the plug.

Ms Elwell: Madam Chair, may I just also indicate recommendation 5 might address the member's concern about flow-through with rates and adjustments to take into account monies paid for renewable energy efficiency programs.

Finally, on the concern about the selling of assets, I would flag Sierra Club's last recommendation 8. We've made a recommendation on how to safeguard public natural resources. While the bill may allow for the actual facility or building to be sold off, I would entreat the com-

mittee to think very hard about whether you really want to sell Niagara Falls, the actual resource, the water itself.

The Chair: I'm going to have to interrupt. We have to leave time for the next presenter. I thank you on behalf of all the members of the committee for coming before us today. We appreciate your advice.

POLLUTION PROBE

The Chair: I'm now calling upon representatives of Pollution Probe, please. Welcome. Before you begin, please introduce yourselves and your positions for the Hansard record.

Mr Ken Ogilvie: My name is Ken Ogilvie and I'm the executive director of Pollution Probe. I have with me here today our technical and policy adviser, Peter Love of Lourie Love Environmental Management Associates, and Joe Castrilli, our legal adviser on issues related to restructuring and the Energy Competition Act.

Our position is that we are in support of three of the measures in the act. We do have comments and concerns to express. In short, we will be arguing, as other groups have done, for inclusion of a system benefits fund and a renewable portfolio standard in the act, or alternatively, but not in preference, within the Ontario Energy Board's mandate. What we'd like to do is to give you our reasoning behind this and to table our research on this subject and answer any questions you may have. I intend to take no more than 15 minutes, hopefully less, to present, and I may cut that even shorter depending on whether I think I'm adding value to the discussion.

I want to start by giving a bit of background on Pollution Probe to explain who we are and what we are. I think many people know, but I think that's important. Then I'd like to define the problem based on some of the research that we've done that we see with some of the existing electricity generation in Canada and the United States. Then I'd like to turn to what we think are some of the policy options and why we support some and we'd like to see others included, and then make just a few concluding remarks.

Pollution Probe, as many of you know, was created in 1969, so we have close to a 30-year history in developing environmental policy and supporting environmental policy development in Ontario and in Canada. We're a national organization with headquarters in Toronto and very recently have opened an Ottawa office to deal more directly with national policy.

We are one of the largest donor-based environmental groups in the country with approximately 10,000 active donors. Our approach has evolved over time, I think, from the early days of pure advocacy to today we have a commitment to using sound science and reliable information. We focus on positive outcomes and we focus on building partnerships with government, industry and other stakeholders. We believe that's an effective way to help shape public policy and we're quite committed to that.

I would mention that I will table a single copy of information reports, but we do have 25 copies of our more

substantive materials that we'd like to put in front of you. I will table an annual review for those of you who may be interested in the scope of what we do.

Work that we've done related to electricity restructuring started with a very careful look at the problem related to coal-fired electric stations. In January of this year we published a report that was led by Peter Love on emissions from 312 operating plants from the United States Great Lake states, the Ohio Valley, through to the east coast of Canada and the northeast United States. I brought one copy of this because it has been previously distributed, but we can certainly make others available.

The results of that are quite stunning. We did look at five emissions of concern. That's sulphur dioxide, nitrogen oxide, particulate matter, carbon dioxide and mercury from these plants. We looked at scenarios out to the year 2010, assuming, I think reasonably, that the US Clean Air Act amendments, as currently stated, will be implemented and that existing promises and commitments will be met.

1140

We looked at the results of applying available control technologies to reduce pollution from those plants. This is important because this is really the major source of emissions of concern. There are other issues related to electricity production, but those five pollutants are huge issues. What we found, of course, is that current levels of these pollutants do threaten the environment and human health, but also that more than 90% of each of these five pollutants are generated in the US Great Lakes states and Ohio Valley states.

How much of that transfers to Canada is a matter of modelling and other studies that are available, but a large amount of this pollution comes to Canada and we bear the brunt of that. We are also significant generators in our own right and have no cause to point too hard at the United States for some of its failures, but we do have a lead in some areas and I'd like to address that.

We also found that existing technology can take the levels of most of these pollutants down by 50% or more. This is best available control technology as specified in some of the US Clean Air Act amendments, with the exception of carbon dioxide, a greenhouse gas, which really does require a shift in energy mix to achieve that goal.

The average emission rates of Ontario Hydro's coal-fired plants are considerably less than the average of similar plants in the United States, although the United States will catch up to Ontario when the Clean Air Act amendments are fully implemented. But we do have a lead. We have invested. We've put the money up already and we should find a way to get the benefits of our investment in cleaner technology.

We went on from there because we believe that the problem is quite clearly defined by ourselves and others and we do need a solution to this. We went on from there to look at policy measures, policy options that could be used to deal with the problem in a competitive energy market. Peter identified 22 policy measures that we looked at and we looked at who was implementing each of those

and what they meant, and they're in a report that we've produced and are releasing today for the first time that has the analysis in it of those measures. Twenty-five copies have been made available.

This report was done for the purpose of selecting seven measures based on criteria that we applied to say these might be of great interest to the province of Ontario. We did at an early date, in March of this year, send a letter to the Honourable Jim Wilson, of which we've given 25 copies, outlining those measures.

Three of those measures have been included in Bill 35 and we support their inclusion. I do have some comments to make on them, but we support their inclusion, and that is emission caps and tradable permits, emission rate standards and mandatory disclosure. I think others have supported those too. There are details to be worked out; we would prefer to see some straightening out of some of the language and some clarifications, and we would really have preferred to have had more time to deal with what the regulations around those measures might look like before the bill is finalized.

For example, I make note of clause 176.1(a) on emissions trading, in which the purposes of emissions trading are, in our view, inaccurately stated. Emissions trading is a means to achieving an end, which is cost-effective reduction of pollution and meeting environmental target standards. It's not intended to maintain or improve existing standards, as noted, or to protect the environment *per se*. It's a market mechanism, it's a tool to be applied. The targets and standards should be set outside of the process of emissions trading independently and should apply to the electricity sector, regardless of whether or not emissions trading is used. A more complete understanding of this tool can be obtained.

Again, we have just received yesterday the results of a conference that Pollution Probe and the Conference Board of Canada put on last year — we have the proceedings — in which we invited up the best American experts on this issue that we could find and had a really, I think, excellent conference. We captured the essence of what has gone on in the United States and in Canada. It's in these proceedings and I will table one copy of this. Again, we can make further ones available.

We have some concerns about the way in which the existing measures are stated but we support the inclusion of these measures in the act. We need to have the authority to use these measures if they make sense, but we need to work out whether in fact they make sense and they're in the public interest.

One of the policy measures we identified in the letter we don't support. We looked at emission caps and voluntary agreements and in a competitive market, it just doesn't work. It's very difficult. We've outlined our reasons for that in our study.

Another of the measures, which is energy efficiency codes and standards, is already captured in other legislation. We support those measures and would like to see further development of those measures.

That leaves us with the two I mentioned at the start of my talk, which is a system benefits fund and the renewable portfolio standard. I'd like to talk a bit about the logic we see behind including those in the bill. I do have Peter Love and Joe Castrilli with more expertise on the legal and technical aspects of these measures, and we can answer questions later.

I think everybody knows what a system benefits fund does, so I don't think I should talk about that other than to say that more than 10 US states have enacted or are proposing to enact a system benefits fund and that this measure is the most common mechanism used to fund energy efficiency internationally. President Clinton has announced support for a \$3 billion per year fund as part of his comprehensive electricity competition plan and we've included a copy of that plan in our study.

Seven states have either passed or are proposing to pass a renewable portfolio standard. Again, President Clinton's plan proposes a standard of 5.5% nationally by the year 2010, excluding hydroelectric sources.

We note that two of the three policy measures that are in the bill — emission caps and trading, and emission rate standards — tend to result in emission control retrofits and fuel switching but are not that effective in controlling greenhouse gas emissions, CO₂ emissions, since they do not reduce the utilization of fossil fuel plants.

Mandatory disclosure is a relatively new policy measure which we totally support, but the effects of that in terms of consumer choice are not that clear. We would like to have that in, but we see it as necessary but not sufficient to move towards greener power.

The system benefits fund and the renewable portfolio standard are, in our mind, the most effective policy measures that we could apply to reduce fossil fuel plant utilization, and that's what gets us to reducing all of the five and many more pollutants that we've mentioned, including CO₂. As simple a fund mechanism as a 1% wires charge could generate savings, according to our estimates, of five terawatt hours per year after 10 years. Energy efficiency programs in New York state have found quantifiable benefits for energy efficiency measures of three times cost. We think that the public benefit is clearly there and the private sector won't provide that without some incentive. As I've stated, if these measures aren't part of Bill 35, we'd like to see some way of having them applied more directly through the Ontario Energy Board.

We have conducted a legal analysis of these measures, of the system benefits fund and the renewable portfolio standards, as well as mandatory disclosure. Joe Castrilli has just submitted his first draft of that report and we will table one copy and, again, can make more available if you'd like. Joe has looked at the Canadian constitutional and federal and provincial legislative authorities to apply these measures. We've made some headway there. Due to time and budget limitations, we couldn't get any further before this date, but we're going to continue on and finalize that study.

Peter Love is conducting a study right now of the cost of upgrading Ontario Hydro's coal-fired plants to US new

source performance standard equivalent, a best available control technology. We expect that to show that we have a significantly lower cost than the US faces in doing similar upgrades, especially if new and existing plants are included in US policy. So we advocate, both in Canada and the US, the achievement of these standards or equivalent and are prepared to look at the application of cost-effective measures like emissions trading as ways to achieve them at least cost.

We will have the study on the cost side, I hope, within about a month or so. It's dependent on receiving some data from Canada and the United States. But I think that the point we're trying to make is that we're in a very good position to be a leader in North America on delivering cleaner energy at competitive prices. That assumes energy imports from the United States are required to meet similarly stringent environmental criteria as our own, and we need to have the legal mechanisms and policy measures to do that.

1150

My conclusion then is that Ontario, as we all know, has the highest smog levels in Canada. We have now again, with a growing economy, growing greenhouse gas emissions, and we have serious acid rain and mercury contamination problems, among other electricity-related issues. All of these five pollutants are emitted in large quantities by coal-fired electric plants and, in particular, transboundary pollution is a huge source of our problem, especially from the older plants that are grandfathered under the Clean Air Act amendments in the United States. But with Bill 35, Ontario does have an unparalleled opportunity to reduce pollution by these substances.

Ontario will not achieve the goals of the provincial and national smog plans without a major shift in the way electrical energy is generated. Moreover, Canada's Kyoto target for reducing greenhouse gas emissions by 6% in the period 2008 to 2012 will not be met if the use of fossil fuels continues to expand as current forecasts predict.

Therefore, today Pollution Probe urges the government of Ontario to be a leader in providing cleaner, competitively priced energy to the people of Ontario. Including provisions for a system benefits fund and a renewable portfolio standard in Bill 35 will give us the tools we need to ensure a comprehensive approach to giving the people of Ontario cleaner air and to supporting our commitment to the international greenhouse gas target set in Kyoto. Thank you very much.

The Chair: Thank you. We have four minutes for questioning from each caucus, beginning with the government caucus.

Mr Galt: Thank you, Mr Ogilvie, for the excellent presentation. I certainly compliment you and organization, a very credible organization concerned about pollution, particularly air pollution, in our many chats over the past three years or so.

You made comments about some of the — I think the term was "stunning information" you gleaned from some 312 fossil fuel plants in the US. It's interesting when we look at Ontario Hydro with all of the electrical organ-

izations in the northeast that we come in — I said “we” — that Ontario Hydro comes in second, with total releases of SO₂, CO₂ and the oxides of nitrogen. I think that gives some of the reasons why Genco, with its three methods of producing electricity — it's wise to hold them together so that the fossil fuel plants are only used for peak periods and the base load comes from other sources of electricity with much lower emissions.

As you're quite aware, this is enabling legislation. Do you see anything in the bill as it's presently written that would block or inhibit any of the kinds of things that you would like to have happen environmentally in the future?

Mr Ogilvie: If I could, I'd just like to ask Peter Love to address the question of the synergy between the five measures, the three that are in the bill and the two that we're proposing, because I think it's important from a long-term market point of view and other issues like greenhouse gases, that these measures work together. I think that's our main messages, that these are complementary, not contradictory, and that the three measures are not complete. Peter, would you like to speak briefly to that?

Mr Peter Love: Yes. As Ken said, we started with 22 measures and we focused them down to seven, which are the ones that we communicated to the Honourable Minister Wilson. We didn't select one that was the best. We didn't try to do that. We didn't try to rate them. What we concluded really was that they work together and they complement each other. I guess a concern of ours is that the bill really focuses on the end-of-pipe solutions. It's talking about caps, it's talking about performance standards, it's talking about disclosure. These are all things that have happened once the coal has been burned, and there's going to be a role for that. Probe is fully in support of those measures and that's clear from our work.

But one of the implications of spending the money, and it's large amounts of money, on emission control technologies is once that money's been spent, that utility, that owner, public or private, is motivated to run those plants for as long and as often and as for many hours as they possibly can in order to recover those high capital costs that they have incurred.

You're continuing to use coal as a base. One of our real concerns is that right now coal, you're right, is used as a peaking fuel in Ontario. However, if Hydro or another private operator were to spend millions of dollars, tens of millions, hundreds of millions of dollars on improving the emission controls at an older plant, that would no longer be used as a peaking station. It's very possible that would be looked at as more of a base station and then we'd have CO₂ emissions actually going up because that station would be used much more.

This is why we really are very much in favour of a combined approach that looks at and encourages — and there's wording certainly in the objectives of the OEB that they want to encourage energy conservation, they want to encourage renewable energy technologies. It's not in Bill 35 itself, and at this point in the OEB Act it's very vague

as to what would be included. We would like to see more consideration being given to that.

It's not just an end-of-pipe solution we're looking for. Just as we did with waste and with garbage 25 years ago, let's look at how we can reduce the amount before we begin to recycle it. Let's look at how we can reduce the amount of electricity that we're actually using or the amount of coal that we're burning and then let's clean up what we have actually had to burn as best we can.

Mr Galt: I think you'd be pleased to realize that the Lennox generating station is in the process of or maybe it has completed now a conversion of two of its generators to gas from oil. I believe the Nanticoke plant is putting cleaners on their stacks. They're moving in that particular direction.

Mr Ogilvie: Yes.

Mr Galt: Just quickly, just one last question —

The Chair: Doug, sorry. I'm sorry, there isn't time.

Mr Galt: Oh, dear. Thank you, Madam Chair.

The Chair: Moving to the official opposition, Mr Conway.

Mr Conway: Just a couple of questions. What would a renewable energy portfolio look like in Ontario in the next 10 years? I think you make a very attractive and powerful argument. I'm trying to imagine myself as a retail customer and that sounds like a good idea. I'm trying to think, what would it look like? What would be in that portfolio for Ontario in the next 10 years, realistically?

Mr Ogilvie: I'd like Peter to answer that again. I agree of course with what I think the Sierra Club has said, which is that wind, solar, small-scale biomass and hydro are definitely candidates for that, but I'm not sure technically — Peter, if you want to address that.

Mr Conway: That's a pretty good answer, by the way, Ken.

Mr Love: I think that was a very good answer. We're talking about what tend to be smaller technologies. They're not huge plants. They're not 1,000 megawatts here and even 500 megawatts there necessarily. We're talking about smaller plants. They tend to be referred to as what's called distributed generation. They tend to be plants that are located closer to where people are. One of the real advantages of that is you have less susceptibility to power interruptions as was experienced in Quebec and eastern Ontario, where you had some lines go out around generating stations and around homes. The whole thing fell through, so that it caused major problems.

This idea of a distributed generation, there are lots of technologies. Some are not competitive now, but will be. We need to be keeping a watching brief on those as they develop. Certainly there are some in the Toronto area right now. The recovery of methane gas from landfill sites is already a very competitive one and that's something that five years ago people thought was both technically unfeasible and probably expensive. That is a renewable technology that we have seen over the last five years come to the fore as being economically viable.

That's what it would look like. I think consumers are looking for it, would be interested in it. The bill certainly

includes a disclaimer requirement and I think consumers are going to be interested in seeing that.

Mr Ogilvie: If I could add just briefly to that, we're doing a great deal of work on emissions trading at Pollution Probe, including participating in the national discussions on an international trading program. There will be, if things evolve as current policy is going, an economic value to some of these other technologies. There will be emission credits generated if these systems come into place, so there will be additional benefits financially.

Mr Conway: The Market Design Committee in its report last month said, and I quote from the report, "An emissions trading system should be implemented when the competitive electricity market opens here in Ontario in the year 2000." Do you expect that we are going to be able to have, on the basis of what you now know, that emissions trading system and the related regulations in place when the door opens to the competitive marketplace 18 months hence?

1200

Mr Ogilvie: I'd like to answer briefly to that and then ask if Joe wanted to say a few words, because Joe has done a great deal of work on the legal dimensions of emissions trading.

What you'll find in the proceedings of the conference that we did — and we've got another report on this coming out in about two months' time or less. We're not as prepared as the United States, because of their legal regime, to implement emissions trading broadly. Our electricity sector perhaps is much closer. We do have pilot studies under way in Canada, but there are some fundamentals that have to be put in place to run emissions trading systems that take care of the public interest, capture the benefits and create a broad enough market.

Mr Conway: Are we going to be ready?

Mr Ogilvie: I doubt it personally, but perhaps Joe, if you'd like to —

The Chair: I'm sorry to interrupt, but I think we have to allow time for the third party to ask a question.

Mr Lessard: I'm very interested in hearing the additional response, so I'm going to ask that you answer the question.

Ms Churley: But hurry, because we have another one.

Mr Joe Castrilli: The short answer to your question is that there are really two types of emissions trading programs extant in North America. There is what is known as an emissions cap and allowance trading, which is basically what the US Clean Air Act employs under title 4. There is also a second system known as "emissions reduction credits," which is what title 1 of that act uses. They are fundamentally different.

As you know, with title 4, you essentially set a global aggregate annual tonnage cap on emissions for sulphur dioxide and then allowances are made available — they are essentially permits — and collectively all utilities in the United States cannot exceed the global aggregate.

The second type of regime, emissions reduction credits, does not set any caps for any substances that are a source of trading. Frankly, although that legislation requires that

reductions of emissions must be a part of the emissions reduction credit program, it would be very difficult to translate that concept to Ontario law because of the nature of the regulations we currently have in place.

However, I think it would be much easier for Ontario to go the route of an emissions cap and an allowance trading program, because right now, under the Ontario Hydro regulation, you already have an emissions cap in place. That's also true for the other three emitters of sulphur dioxide in this province. Nova Scotia has an emissions cap and allowance trading requirement for its one utility. I think that approach is eminently capable of being employed in Ontario within reasonable period of time, perhaps even as soon as the year 2000. But if you attempt to use the existing regulation 346, which are point-of-impingement regulations, you will not get anywhere with respect to emissions trading and environmental improvement.

Mr Lessard: One of the things the government likes to say is that if you make green power available to consumers, they will choose it and it doesn't matter how much higher the price may be or what the premium may be. I think there are some real severe limits to what consumers will purchase. Do you feel that market for green power will develop without the renewable portfolio standard being included in Bill 35?

Mr Ogilvie: Do you want to answer that? You touched on it in your work.

Mr Castrilli: If I can just briefly respond to that, I noted in the Macdonald committee report of 1995 that there were really two contradictory tendencies set out in that report. The first one was what you just stated, that increased competition would lead to increased green electricity. The second tendency and approach of that committee, however, was to state that they had concerns about the extent to which that would occur without the influence of regulatory controls.

I think as you move forward in the policy material that was developed subsequent to the Macdonald committee, there's been, if I can put it this way, an accentuation of the notion that competition all by itself will lead to green electricity and a de-accentuation, if that's a word, on the notion of whether regulatory controls are necessary. I think the Macdonald committee had it exactly right: We've got to do both. I don't see both right now necessarily in Bill 35.

The Chair: On that note, our time has expired. As you can see from the co-operative way we were handling our questions here, this committee is truly interested in finding the best solution to changing the electricity industry that we have in the province, and we thank you for coming forward with your suggestions today.

Mr Phillips: Chair, before we break, I was pleased yesterday when the government said it would supply some information on Hydro accounting. I want to be sure that they're providing the information that I requested yesterday. I'm very interested in the \$6.5-billion Hydro write-downs in 1997, including —

Interjections.

The Chair: Just a moment, please, so we can hear.

Mr Phillips: I mentioned yesterday the tree-trimming, the interest costs, the replacement energy, I think \$800 million in interest write-offs. I think the government indicated yesterday that they all followed proper accounting procedures. I just wanted that to be included.

Mrs Johns: What I promised yesterday was that I would prove that the costs that were incurred as a result of the ice storm should be properly included — even if they hadn't been incurred, they should be accrued — and that I could get an accounting opinion on that to you. I think you should get that information. If the member would like to ask another question about that, he should ask legislative research to get that.

Mr Phillips: Okay, that's good. Then why don't I ask legislative research to provide that.

The Chair: Fair enough. You might want to talk further on details.

Mr Phillips: Okay, good.

The Chair: Colleagues, we're going to stand recessed and we'll reconvene this afternoon at 1:30 in this room.

The committee recessed from 1206 to 1332.

ANDREW FRAME

The Chair: Good afternoon, everyone. Our first presenter this afternoon is Andrew Frame. Welcome, sir. We are pleased to have you with us this afternoon. If you would like to introduce yourself formally, you have 30 minutes for presentation time.

Mr Andrew Frame: Good afternoon, ladies and gentlemen. I want to thank the committee for the opportunity to appear before you today.

You have a one-page handout regarding my qualifications and my background and education and the things I have done in the electrical power business. You may note that I am not part of a group, a company, an association or anything else like that. If I am a part of a group, I am part of that 3.5 million who are customers of Ontario Hydro and I am here really hoping to make some comment on this legislation. I don't claim to speak on behalf of customers, but I am a customer and I am looking at it from a customer's point of view.

Bill 35 is a historic change in the way electrical power is handled in Ontario. The electrical power industry changes dramatically with this bill. It has all-party support. This is rather unique. Not very often does a major piece of legislation come in with all-party support, but this one has it.

My presentation to you today is from the aspect of my career working with the government in the Ministry of Energy as senior adviser on hydro utilities for a period of 17 years. I worked for 15 ministers over 17 years and I worked with all parties in their stints in government.

During those years, they all had problems with Hydro. Various things happened, but Hydro was continually in the news. There were problems of various sorts, some minor, some major.

Someone once said to me that Hydro was like an elephant. An elephant is going through the jungle and there is a man up on top of the elephant and you say that the man is in control of the elephant. You tell him to start and he starts, you tell him to stop and he stops, turn right, turn left and he does what you tell him. But you're never really sure. If the elephant decides to lie down and roll over top of you, you're dead.

That's really the kind of problem that governments have had with Hydro. They weren't really sure what Hydro was going to do next and what kinds of troubles it was going to cause and if it was going to bring down a government.

Hydro has, under present legislation, a lot of powers. Determining the cost of electricity in Ontario: I guess maybe the best-known one, or maybe you're not too familiar with it, is section 92 where it talks about selling electricity to municipalities. The cost will be the cost determined by it, "it" meaning Hydro. So I guess the elephant is called "it." They could determine whatever was going to be in the cost base — no arguments, no appeals. This was the cost, this is what you had to buy it for, for resale to municipalities. That caused all kinds of problems in the rates and other things, but cost determined by "it."

What has happened is that the existing legislation is not enough to control Hydro. There are many problems and the government of the day has come to the conclusion that it can't be fixed with minor adjustments, that what you have to do is make a major change, a new approach, new legislation. The government has chosen to set it in a framework of competition in the electrical industry.

But Bill 35 is not just about competition. There are many, many more things involved. The legislation introduces many new factors into the electrical power industry. Competition is getting the big play. The finance paper put out recently said that competition will ensure that you have the lowest possible rates. I don't think they can ensure that at all. You've been careful not to say that you're going to have lower rates. Earlier this week, both the minister and the president of Hydro were very careful to say you're not going to have lower rates.

The minister, when he introduced the legislation, talked about the old vision, the Adam Beck vision. He said the Adam Beck vision has come to an end. The Adam Beck vision of Hydro in Ontario was one of public ownership, no profits and no taxes. Things were done for the benefit of the customer. Now this new vision that you've got before you is quite different. It brings in competition, it brings in investment by private investors — and there won't be any investment unless you have assured of a profit — and it brings in a lot of taxes.

You don't mention taxes in press releases. You call that a level playing field. All the time we hear government referring to the level playing field, but it's really a euphemism for the many areas in which this legislation introduces taxes into the hydro system or into the electrical power system when they weren't there before.

I think the policy of the government in the legislation is making some bold assumptions. The assumption is that the industry, with the competition, in generation in particular, maybe in distribution, will bring about such lower costs — you'll have people working smarter or more efficiently or doing something magical or maybe getting better interest rates, Lord only knows — that somehow all this will offset what has to contribute to the higher costs, the profits that will be expected by the people who invest in the industry, and the taxes which the government is going to extract from the industry.

It has been said that you can be assured of lower rates and one of your colleagues has said, "That's a leap of faith," and I certainly agree. I don't see those lower rates at all.

1340

In the Power Corporation Act, you have 28 places where order-in-council approval is needed. This is approval by the Lieutenant Governor in Council; ie, approval by the cabinet. What is not in that act is approval of rates. There's no way that Hydro requires an order in council or any other approval. Hydro sets its own rates and these are reflected through to the customers.

The new act brings in regulations allowing you to set a lot of regulations. Several of them will be for rates. So you say: "Okay, the problem is solved; we're going to regulate the rates and the customers will be happy. Great stuff. Problem solved." But I'm not quite sure if that's the case or not, because first of all I haven't seen the regulations and neither have you.

In the situation in California a couple of years ago when they were introducing the legislation, the first tabling of the regulations, there were 1,000 pages of regulations. I'm not sure what the regulations in Ontario are going to look like. If there are 1,000 pages, how many of you are going to read them? But the Ontario Energy Board will advise the cabinet, the cabinet will pass the regulations and you're going to have regulations. But no longer will you have, as in the present act, the powers to review legislation that will be looking at some of the key things which happen in the electrical power industry: Hydro buying and selling land, building generating stations, transmission lines, selling power, buying in power and many other things which were part of an order-in-council approval. These are all gone.

The assumption here is that the government-appointed board of directors — the government's the shareholder; the shareholder will appoint the board of directors — in their wisdom will control all these things and make all the right decisions and do all the right things to bring about a good situation: lower rates, better hydro system, better electric power system we're going to call it now. The legislation gives both the Minister of Energy, Science and Technology and, particularly, the Minister of Finance wide powers to do things without going through cabinet: "The minister may do this; the minister may do that."

The minister can also make rules. In several places, it refers to rules. Rules don't have to be approved by anybody. They don't even have to be gazetted. Regula-

tions do. They go through the cabinet and have to be gazetted. But rules are made and they're just the rules. You'll find out later when somebody tells you what the rule is. There are wide powers in the act for the government.

As members of the Legislature, you have to be concerned about what influence you're going to have, about who's going to answer for all the things that can go wrong. The public, the customers, are going to want to know who's doing what and why these changes are coming about, particularly when they're adverse. If there's a power shortage or power interruptions, if there are massive rate increases, who answers? The public is going to expect their elected representatives, the members of the Legislature, to provide the answers and to be able to question what's going on.

But you can say: "Oh, but don't worry about it. Competition is going to bring around a good situation and control everything. We're going to have lower prices." Okay. How about the oil industry? Lots of competition in the oil industry. How are you doing on controlling the gasoline prices at the pump? The provincial and federal government have both been frustrated for many years trying to get a handle on gasoline prices. Lots of competition and the prices do what they want and you can't do a darn thing about it. As a guy who has to fill up my tank, it drives me crazy.

My brief to you today is to say that the legislation is incomplete. The public, the customers, expect some control by their elected representatives. You have a responsibility. I am suggesting that you need a standing committee on electric power as part of this act to look after the interests of the public and the customers, a standing committee to review the reports that go to the ministry from the four different groups and comment on those reports and act on a continuing basis on all other matters on electric power in Ontario.

Why a separate standing committee? First of all, the electric power service in Ontario is vital. It's one of the most important services we have in the province. The tolerance for being without electricity is about 15 minutes. If the power went off in this room right now, we would shut down and go home. It's a vital service. The second reason is that this legislation makes major changes in the way the electrical power industry is handled. It makes major changes in municipal hydro utilities, the way they're going to act. There has to be an overview, somebody that you can appeal to. Third is that you're going to have a lot of regulations. I don't know how many, when they're going to come, what they're going to look like, how many pages, what they're going to cover. I'm not sure what the rate legislation's going to say and what the basis of rate regulation will be. Will it be return on investment? Will it be something else? We'll have to wait until the OEB tells us.

There are things you cannot control which are going to affect rates: interest rates, inflation. The US dollar has an effect on hydro costs. You can't control those things, but you're hoping to control the other things. It's not sufficient

to put your faith in the control of competition. You have to have some additional control and a review process. A public review is necessary. If you don't get some review in this legislation, so that somebody's responsible to look after and be continually on top of what's going to happen, you may find you've got four new elephants out of control. You need a review process. My brief to you is that you should recommend the establishment of a standing committee on electric power as part of the Ontario legislative review.

Thank you for listening. I'd be pleased to answer any questions you may have on my presentation or any other aspects of the legislation that I may be able to answer.

The Chair: Thank you very much. We have five minutes for questioning from each caucus. We'll begin with the official opposition.

Mr Conway: Well, a man with a view. Should it concern this committee that we are well into our deliberation without any specific understanding as to the nature and extent of the stranded debt and how that stranded debt will be disposed of across the various rate categories?

Mr Frame: It certainly should, because the key to what's going to happen in the electrical power business and what kind of rates you get and what kind of competition you're going to get is a decision that the minister is going to make regarding the transfer of assets. Genco and Servco are going to want to transfer as much as possible of their debt out of their system into the Financial Corp and let it be paid off through special payments and taxes. If they only hang on to a little bit, they're in a very competitive position.

But the government, on the other side, is going to want to have as little debt in the Ontario Hydro Financial Corp as possible so it gets paid off early, because once it gets paid off, the revenues that are in some parts of the legislation become a revenue stream into the general funds of the province. That decision is going to be made sometime down the line by the — I think the legislation gives the power to Minister of Finance to make that decision, how those assets are going to be transferred. You should be very concerned about it. It's the key to the whole future operation of the industry.

1350

Mr Conway: And understanding the nature, the extent and the disposition of that stranded debt would, in your opinion, have a material impact on our understanding of rates and what might happen, at least in the intermediate term, to rates across various categories.

Mr Frame: I'd say it's going to be the key factor, but there are also many other factors regarding future rates. The way the Ontario Energy Board writes the regulations, which will have to be approved by the legislation committee of cabinet, what they put in those regulations, how extensive they are, how well they're enforced and all kinds of other things, that's going to be the other key factor on what kinds of rates or costs the electrical power customers of Ontario are going to have to pay.

Mr Conway: I should just add to that. The representatives of the Ministry of Finance told this committee a

few days ago that it was premature to be looking at issues of stranded debt. My great fear is that we're not going to get any of the hard data on stranded debt until after the bill is written and done with.

Mr Frame: I agree completely. It's a fear that you should all have. It will be too late when all these things are written into regulations, are being passed and are put into operation.

Mr Conway: Final question: Should the purpose clause of Bill 35 incorporate some reasonable commitment to the lowest possible electricity rates to various customer classes in the province? You point out that section 92 of the old Power Corporation Act has language around the old-time religion: power at cost. I'm happy to see the Globe and Mail here. Nothing excites my friends at the Globe and Mail more than commodity-at-cost issues. What about the purpose clause in Bill 35? It's silent on the question of lowest possible rates. Should the bill incorporate some language?

Mr Frame: It's silent for a very good reason, because they have no concrete way of knowing what those future costs are going to be and what those other factors are going to involve. They don't want to be held to the fire later on when rates are sky-high.

Mr Conway: But surely this is going to bring the rates down. I say that facetiously.

Mr Frame: Let me throw in something here —

Mr Conway: Well, as you answer that question, because my time is going to run out very quickly, the other side of that question is that we're only here today because we were here a year ago. A year ago this week the old electricity order in this province was shown to be rather delinquent in the delivery of promises made over many years. So the status quo is not an option, clearly.

Mr Frame: I mentioned section 92 of the Power Corporation Act, which says costs determined by it. A few years ago, maybe it's six, one of the governments of the day decided that conservation and green energy and all kinds of things were good things, and Hydro went into an announced program of investing \$6 billion over 10 years for all these good things, all this great stuff, except that Hydro's financial data, its balance sheets, were showing they couldn't afford it.

I think Bill Walker from the Toronto Star interviewed the chairman of Ontario Hydro and I guess it came out that, yes, there were going to have to be some rate increases, and it came out to 13% and 14% each year for the next three years. Mr Walker wrote a story and somehow the headline of the story was "Hydro Rates to Increase 44% over Next Three Years." The chairman didn't say 44%; Mr Walker or somebody did some compounding. That story was the turnaround point where people realized that Hydro was out of control; you couldn't tolerate 44% and something had to be done. Hydro was doing what they wanted and this had to come to an end.

Now what you may be doing is giving the government the power to do what they want, without any control. My brief to you today is that you need a control mechanism

built into this legislation so that you as the members of the Legislature can get up and hoot and holler and question when things aren't being done properly to protect the customer.

Mr Lessard: I want to thank you very much for your presentation, Mr Frame. I hope the government members are listening carefully. I wish there were a few more of them here to listen, because when I look at your credentials, I can see that they're impeccable. You have a long history and a depth of understanding of the electricity industry that very few of us could ever come close to.

One of the recommendations you've made very strongly for this standing committee on electricity issues — and we in the opposition, the NDP, may recommend an amendment to the legislation to that effect, but you know what happens to recommendations for amendments by opposition parties. They oftentimes get defeated by the government majority. That is one of the questions I have for you in recommending this sort of approach: If a standing committee is dominated by government members, how does a standing committee have any more impact on what is going on in the electricity industry than the minister may have? Ultimately, the standing committee is going to be controlled by the government.

Mr Frame: I think you have the ability through hearings you may have and reports you may issue to bring it to the attention of the public and hope that the media will assist you in bringing it to the attention of the public when things go wrong. Things will go wrong. You aren't going to have a smooth ride on this thing. You'll have the ability to make recommendations for changes in the legislation. I agree with you that the minority parties will have a difficult time, but through the media, through the pressures you can bring, through the reports and recommendations you can make, you may bring the government around to your way of thinking. Of course, it all makes good points come the following election. It can be a major point on an election platform.

Mr Lessard: One of the things we've been recommending is that if the government is so convinced that rates are going to go down, they should put that guarantee in the legislation, but I don't think we're going to see that either.

I think it's imperative that we know what the amount of the stranded debt is and that we also know what the regulations are going to entail before we pass this legislation. If the stranded debt number is wrong, I'd like to know your sense of what the impact of that is going to be: too high or too low? What do you think will happen?

Mr Frame: I don't know, the government doesn't know, Ontario Hydro doesn't know. In a recent annual report, the notes to the financial statement — you've all got a copy of the financial statement and maybe you read some of it, but you have to get into the notes to the financial pages, the financial notes. I think it's note 1, 1A and note 6, where they talk about stranded debt, which is related to stranded assets. They've set aside \$6.5 billion, but those notes clearly explain that they're not sure what the stranded debt is going to be because they're really not

sure what the future of some assets is. The note admits it. You've got to look carefully in the small print of the financial notes to the balance sheet of the annual report to find this, but it's there. What I'm really saying is, it's a big unknown. The government certainly isn't going to make a commitment to lower rates because it's a big, big unknown.

Mrs Johns: Thank you for the presentation. I've seen you in a number of committees over my last three years in energy. I thought first of all you were at the Ministry of Energy over those 17 years, but you've been in the private sector. Is that correct?

Mr Frame: For the last six years. I've been doing a little consulting and some writing.

Mrs Johns: Over the last 17 years that you've been working, or maybe 20 years, let's say, how many standing and select committees do you think there have been in this place on Ontario Hydro?

Mr Frame: To my knowledge, there has not been a standing committee on electric power. There have been several special committees. The first special committee I was on, the committee convened for the building and leasing of the new Hydro building, back around 1976. They go on from select committees to —

Mrs Johns: I think we'll just agree that there have been a lot. Let's not go through them.

Mr Conway: We don't want to go there, Helen.

Mrs Johns: We don't want to go there.

Mr Frame: A lot of them, yes.

Mrs Johns: I think you would agree with me that there has been substantial work done on committees and through the government on Ontario Hydro. Myself, I have been on two committees on Hydro now since I've been here in my short period. I think if we ask Mr Conway, he could tell us of many more.

Mr Frame: I agree.

1400

Mrs Johns: We've had committees of some sort on Hydro, and would you agree with me today that Hydro has a substantial number of problems?

Mr Frame: The existing Hydro, yes.

Mrs Johns: We have gone through all these committees and it hasn't seemed to do anything to clean up Ontario Hydro, so I guess my comment would be that maybe we should try and do something a little different than we've done in the past to be able to make Hydro move forward.

The question I want to ask you today is about the debt. You have very strong feelings, it appears to me, about the cost of power in the future, and we've had people here talking about the cost of power. We're getting different visions from everybody. We of course had Enron here this morning, who presented this chart and it talked about prices in the gas, long distance, telecom, airlines, trucking and railroad, where as a result of introducing competition into all of those systems there has been a substantial reduction in prices over two years, five years and 10 years. In fact, I think today even the opposition suggested that over the medium and long term, they felt there were going

to be some substantial reductions in pricing. I could start to quote lots of people here; I've got enough quotes here to read to you for my whole four minutes. But I would like to know, since you're paying 40 cents on every \$1 of your hydro bill now, as you're a consumer, for debt and interest payments, and that debt and interest payment is going to be in existence afterwards and we're not adding any debt to Ontario Hydro as a result of Bill 35, how do you think the payments you're paying for hydro are going to go up?

Mr Frame: First of all, I think you cannot be sure what your generating costs are going to be. You think they're going to come from lower-cost sources and that the people you get this generation from will operate with more efficiency or at lower cost, and you're assuming that those low-cost generation costs will offset the higher — they have to have a profit — will offset the other things which are going to happen in the act: special payments and taxes.

Mrs Johns: Let's just talk about that. We have other power corporations that have come in in the last two or three days. We had a number of them. We had GLP up in Sudbury yesterday, which does produce power at a lower price than Ontario Hydro, so we have specific examples in Ontario right now where generation costs are lower than the costs that Ontario Hydro is producing it for.

Mr Frame: Yes, for a very good reason. Great Lakes Power up in Sault Ste Marie are about 360 megawatts and they are all hydroelectric generation — very low-cost. They don't have the generation mix of nuclear hydroelectric and coal and oil, and that's why they've got lower costs up there. That's the main reason and that's 90% of the reason they have lower costs.

The Chair: Sorry. We have to stay on schedule because we have other presenters to come forward. Mr Frame, on behalf of all the members of the committee, I thank you for coming forward with the wisdom of your experience and we will consider your suggestions carefully.

CUPE LOCAL 1

The Chair: I now call on representatives from the Canadian Union of Public Employees Local 1. Good afternoon and welcome.

Mr Bruno Silano: My name is Bruno Silano and I'm the president of CUPE Local 1. To my immediate right is Brother Paul Kahnert, an overhead line foreperson in our overhead construction department; to my immediate left is Sister Pauline Niles, the local's WCB representative; and to my far left is Brother Brian Peterson, overhead construction department, Etobicoke district. I trust that everyone has a copy of our brief.

First allow me to say a few words about CUPE Local 1 and who we are. Our employer is the new Toronto Hydro. The workers at Toronto Hydro have been unionized dating back to around 1913. Local 1 presently represents over 1,600 women and men in trades, technical and clerical positions. Our unionized workforce is highly trained, skilled and qualified. CUPE Local 1 and Toronto Hydro have spent an enormous amount of time, energy and

resources with the members of our union to bring them to their present level. Our workforce is involved in every aspect of the operation of the utility, from the lines, poles and transformers you see on the street to the cables and transformers underground, from the planning and design of the distribution system to the members who send out bills and answer customer inquiries.

What is a municipal utility? A municipal utility, specifically Toronto Hydro, is presently wholly owned by the public. The new Toronto Hydro comprises the six former municipal utilities which existed in Metro Toronto before Bill 103.

A municipal utility such as Toronto Hydro purchases electrical power directly from Ontario Hydro wholesale and then marks up the price and resells electricity to the residents and businesses of the new city of Toronto. Toronto Hydro receives no taxpayer money whatsoever. We sell power at cost to the residents and businesses. The markup is enough to finance Toronto Hydro's entire operation. Toronto Hydro is a revenue generator for the city of Toronto. The utility makes payments to the city of Toronto in lieu of taxes. The public owns the electrical infrastructure. The public, through payment of their electrical bills, has paid for the highly skilled workforce that is now in place at Toronto Hydro. The public owns the fleet vehicles. The new mega-utility has gross revenues of \$2 billion a year. Of that figure, approximately 80% goes to pay Ontario Hydro for power. The remainder forms the basis for Toronto Hydro's operating and capital expenditure budgets. The utility is self-sufficient.

In the beginning, electricity was developed to serve the citizenry. It is now a necessity. Just ask people from eastern Ontario and Quebec. Electricity is a vital service. It is just as important as water and air. People take electricity for granted, that is, until you no longer have it. That's when our members tell us you see residents come screaming into the streets demanding that power be restored as quickly as possible. In essence the city of Toronto, like all cities and towns, depends on electricity.

Our union is fundamentally opposed to this piece of legislation. CUPE Local 1 is very concerned with the government's policy on electrical deregulation. Why are we in Ontario proposing to deregulate the electricity industry? There are no public protests on the lawns here at Queen's Park, where the citizens of this great province are demanding lower electricity prices. So what's the rush for this rapid and radical deregulation? What's the panic all about to break up public electric monopolies?

Under the guise of economic restructuring of the electricity sector, this government is heading down a road which will lead the province to ruin. There is no hard evidence anywhere that deregulation will necessarily lead to lower rates, but what evidence there is out there shows quite clearly the opposite: that deregulation has been a great success only for large industrial and commercial users of electricity, their executives and shareholders, who have benefited tremendously from deregulation.

Deregulation for the sake of deregulation or because it's what they're doing south of the border is not reason

enough to introduce it here in Ontario. This government, we believe, is interested in deregulation because their short-term objective is to reduce or not be on the hook for Ontario Hydro's debt by selling their interests to the private sector.

Investment firms and dealers, self-interested elite and American power companies have indicated that they will scoop up anything for sale at Ontario Hydro. These so-called stakeholders are lobbying for the breakup of the electricity utility sector as they stand to make enormous profits from the demise of municipal utilities and Ontario Hydro. The pressure to run the electrical system for profit will lead to cuts in health and safety, training, maintenance programs, wages and benefits. These, however, are deemed efficiencies in the brave new world of the competitive marketplace.

1410

I would now like to draw the committee's attention to a few examples of deregulation in other sectors, first the telecommunications sector. On Tuesday of this week this committee heard from the president and CEO of Ontario Hydro and the former head of Bell Canada, Mr Ron Osborne. In his deputation to you he stated, "The overall effect of telecom deregulation and competition on employment has been positive." No facts, no figures, no evidence, just a blanket statement.

I can tell you for sure that when long-distance rates were deregulated by the CRTC in 1992, Bell Canada eliminated over 10,000 jobs. Then it rehired some of these workers, placed them in a company called Entourage and paid these workers on average \$6 an hour less and with about half the benefits of their Bell counterparts for doing the exact same work.

Before long-distance deregulation was introduced, basic phone service in Toronto was at \$13.70 a month, in 1994. It now averages \$24.50 a month and by the year 2002 it will average \$27.25 a month, almost a 100% increase in less than four years. Clearly, telephone companies are gouging residential and small business customers to make up for lost revenues in the long-distance market. Competition was supposed to benefit all customers, but all we have seen in the telephone sector is higher local rates and increased telephone company profits, reduced employee wages and benefits and more telecommunication mergers benefiting underwriting companies and lawyers. Ma Bell, however, argues that local rate hikes are necessary to pay for innovation.

As recently as just last year, the CRTC allowed for competition on local phone rates to take effect on January 1 of this year. On the mere threat of local competition being introduced, Bell cut an additional 2,000 jobs in order to compete. If this is positive, as Mr Osborne put it, I would hate to see negative.

Deregulation of long-distance rates has meant no saving to the average person and small business. In fact, if you make relatively few long distance calls, you're a big loser, as any saving may have been more than offset by increases in local rates.

The people of our society that have benefited the most from telecom deregulation are the large institutions, such as banks and brokerage houses, that are making thousands of dollars worth of long-distance telephone calls every day. They are the big winners.

Next I would like to briefly discuss the airline sector. Deregulation has taken a terrible toll in air transportation in Canada. Deregulation of the airline sector has been a failure. After over a decade of aviation deregulation, the airline industry in Canada is highly concentrated, there is overcapacity and sharply rising average fares which are obviously not benefiting consumers. Air travel has become less convenient to passengers and there has been a reduction in service to some regional centres.

The problems facing the airline industry are directly related to a free and open competitive market. The absence of any effective regulatory levers has left the federal government powerless to intervene and to try to achieve a fair balance between market forces and the protection of the public interest. Safety has decreased as accidents and near misses are on the rise because competition is so stiff that budgets for training and safety have decreased.

Airline deregulation and privatization have meant layoffs — over 10,000 jobs have been eliminated between 1989 and 1994 — more job insecurity, poorer working conditions, wage freezes and cuts and a climate of fear in the workplace. In 1996, Canadian Airlines was on the verge of collapse. It was at collective bargaining that it demanded wage and benefit concessions from workers in CUPE, the Canadian Auto Workers union and the International Association of Machinists for the airline to stay afloat.

Neither Canadian consumers nor airline industry employees have benefited from airline deregulation.

Next is the electricity sector. In the late 1980s, British Prime Minister Margaret Thatcher launched a massive campaign to dismantle and privatize what had been a huge publicly owned utility infrastructure in England. The government sold off the bulk of its electrical system in 1990. The reality is that the privatization of electricity has resulted in thousands of layoffs, prices being kept artificially high and soaring salaries for the new class of utility tycoons that the privatization binge created. Executive pay rates skyrocketed and owners of shares in the utilities made handsome profits instead of using these moneys to reduce rates for the vast majority of customers. Economist George Yarrow of the Regulatory Policy Institute calculated that in 1991 the price of electricity was 25% higher than could be expected if privatization had not taken place.

In the electrical industry, productivity improvements have come about through layoffs, not changes in operating methods. Employment in the industry fell from 143,000 jobs at privatization to 116,000 jobs in 1993. The generating companies halved jobs from 24,500 to 11,900 over the same period — the *International Herald Tribune*, May 16, 1995.

Finally, perhaps the most overlooked benefit of public utility ownership was also lost in Britain and that is the ability to generate significant revenues for a struggling public treasury. A British member of Parliament published a report in *The Guardian* on September 26, 1995, which included the following revealing figures. Under public ownership, the treasury received almost £6 billion, roughly C\$12.5 billion, in revenues. Compare this £6 billion with the £3.1 million paid in through taxation under private ownership.

This revenue shortfall had to be made up by the government in other ways, whether through higher taxes or, more likely, cutting even more services altogether. If valuable public assets are to be privatized, the benefits that have been shared by all consumers and taxpayers will instead be transferred to corporate executives and shareholders. As you can imagine, revenue from utilities sent to investors as dividends would have a very different effect on the local economy than continuing to use those same revenues, say, for social services, affordable recreation, snow removal and, yes, perhaps even property tax cuts.

Background: Ontario Hydro has been at the heart of this province's economy since its inception back in 1906. It has assets of over \$43 billion. In 1994 and 1995 it made a net profit of nearly \$600 million in each year. Quite clearly it is a valuable asset that serves all the citizens of this province.

All of Ontario Hydro's infrastructure system was built and paid for by Ontario taxpayers. Even though it is not being run properly by management, it is still turning a profit and able to meet the payments on its debt. Ontario Hydro and the municipal utilities are an enormous asset to the citizenry of this province. We have all been investing in municipal utilities and Ontario Hydro for decades. Ontario Hydro and municipal utilities are quite clearly a prize which this government intends to destroy and eventually sell off to the highest bidder. This is going against Ontario Hydro's mandate to provide cheap electricity to all customers and not to make a profit for private shareholders.

Rates: Ontario Hydro and municipal utilities have very cheap electricity rates compared to the United States. As well, Ontarians, including large commercial and industrial users of electricity, enjoy some of the lowest electricity rates in the world. The vast majority of US power companies are privately owned, yet in North America public power is on average 33% cheaper than private power. Just ask anyone living in New York or Los Angeles. They envy our electricity rates.

The government is proposing to unleash deregulation and competition on this province with no certainty of what the outcome will be on residential and small business electricity rates. The consumer is having to play the role of guinea pig. The relationship that the residents and businesses of this province have enjoyed for over 90 years is coming to an end. This free market experiment is extremely risky to the public in this province. All we are told is to believe in the discipline of the marketplace. The government and other so-called stakeholders want to

convince the public that the marketplace should be the sole arbitrator or referee in control of price, service and customer choice. That simply is not good enough. Rates have been on the decline in Ontario predominantly for large users of electricity.

The rate schedule that has been historically in place throughout Ontario has been such that the residential and small business sectors have been interfinanced by the large commercial and industrial users of electricity. The latter sector is no longer interested in this arrangement and wants to opt out. This is the real reason why AMPCO, for example, is in favour of deregulation. But by doing this, these large customers are abandoning their civic responsibilities to the cities, towns and communities in which they operate. It will mean a huge cost shift from the large industrial and commercial users of electricity on to residential and small businesses. We are at serious risk of throwing out the good with the bad. Cheap public power gave Ontario a competitive advantage.

1420

Nothing is as important to a modern society as electricity. It provides us with light, heat and a high standard of living. Electricity is ubiquitous. It is omnipresent. Electricity in fact plays a huge social role in our society. We cannot simply leave electricity to the marketplace. Electricity should not be treated as a commodity. Where an electricity market has been created in other jurisdictions, we are seeing that it is far more volatile than, say, natural gas or the petroleum market.

For example, in Alberta in June of this year, there was a shortage of electricity in the Alberta power pool. This resulted in the spot price of electricity spiking as high as \$1,000 a megawatt per hour. Just two years ago, before deregulation, the price of electricity was very stable at only \$15 a megawatt-hour.

About the bill: This bill is vacuous. There is not a lot of detail and, as usual, all the detail will be in the regulations. This legislation will lead to the dismemberment of municipal utilities and Ontario Hydro alike, and then ultimately to privatization. We at Local 1 firmly believe that the true thrust of this legislation is to lay the groundwork to eventually privatize Ontario Hydro and the municipal utilities. This legislation is very careful not to mention the P word, because it recognizes that the majority of residences in the province of Ontario are against the selling off of Ontario Hydro and their municipal utilities.

You are not fooling anyone. By forcing the incorporation of Genco and Servco at Ontario Hydro and doing the same for the MEU's wires and competitive businesses, it is clear that privatization is headed our way. In fact, the legislation states that only the initial shares shall be held by the transferor municipal commission. What about subsequent shares?

Stranded debt: I will admit that Ontario Hydro is a bit of a modern-day financial Frankenstein. However, this legislation conveniently has created a financial holding company that is responsible for any debt. This is a publicly held crown company. How convenient. This bill proposes to saddle the public with this multi-billion dollar

debt, but Servco and Genco, which can earn money, are non-crown corporations. These corporations that may earn money in the future have to hand over any monies to their eventual shareholders and executives.

Jobs: Deregulation, competition and eventual privatization will lead to huge job loss in the public sector. Cutting the public sector not only erodes valuable public services that are key to economic stability, but the cuts also eliminate an important source of decent jobs. The public sector has been an important provider of good jobs in recent decades, offering decent wages and benefits and stable employment. By comparison, small and medium-size businesses, where most of the job growth might take place under deregulation, generally offer lower wages and benefits. Private companies, part-timers and contractors will not have the skill, knowledge and experience to keep the hydro system safe and reliable. These types of jobs will not bring stability to our economy. Competition at Toronto Hydro has already been used to justify two downsizings, resulting in over 800 jobs being eliminated — 800 skilled jobs for our young people, gone forever.

Conclusion: On his deathbed in 1925, Sir Adam Beck, the founder of Ontario Hydro, said, "I had hoped to live to forge a band of iron around the Hydro to prevent its destruction by politicians." Then he delivered a warning: "Watch what they do when I'm gone." How prophetic.

Now, 73 years later, this government is poised to do just that — destroy Ontario Hydro and the province's municipal utilities with this legislation. There is nothing in this bill for the public or workers. The bill does not ensure that any savings must go back to the consumer or be reinvested in workers. The public sector must receive renewed investment. The public creates the infrastructure on which our economy runs.

We ask that the government rethink its position on deregulating the electrical industry. Our union is not afraid of change, but we must be cautious because once we have started down this path, it is very difficult to turn back. Deregulation, competition and ultimately privatization are not in the best interests of the Ontario public. Residential and small business customers stand to lose the most, along with utility workers across the province. On behalf of the organized workers at Toronto Hydro, we submit that the existing public ownership structure be maintained.

We must remember one very important point of history here. Ontario Hydro was created by a referendum, where the citizenry of this province overwhelmingly voted to create a provincial, non-profit, publicly accountable utility. We request that before the municipal utilities or Ontario Hydro are broken up that another referendum and debate be held on this issue. The people of Ontario voted to create Ontario Hydro, and it must be the people of Ontario that decide to break up Ontario Hydro. To do otherwise flies in the face of this government's pre-election position that they were in favour of referendums, as they were trying to portray themselves as a populist government. To my recollection, the only referendum since the Tories have come to power was whether or not to build a casino in Niagara Falls. Surely, the future of

Ontario Hydro deserves the same consideration as a casino, does it not?

However, if the public decides to proceed with this legislation, then we would respectfully submit the following changes:

Regulation is needed that ensures the highest environmental standards, fair electricity rates, reliability, safety, public access and workers' rights. There must be specific residential and small business customer protection described in the regulations.

Successor rights and pension rights must be enshrined in the regulations also. No trickery. Our collective agreements must go along with the successor companies. We urge you in the strongest possible terms that these must be put into the regulations.

There must be strict environmental protection. The bill should discourage dirty electricity production with a surcharge.

Consumers must oversee the electricity marketplace with the power to effect change. Thus, we recommend that market watchdog groups have designated seats on the board of directors for citizens and labour representatives from the utility sector in this province.

The bill must have a mechanism for ratepayers to have access to policy or decision-making at the highest levels of this marketplace.

Finally, the bill should explicitly state that its goal is not to privatize the municipal utilities' or Ontario Hydro's successor companies and that these companies clearly continue to remain in the public interest and accountable to their city or town councils and provincial governments respectively.

Thank you for your time this afternoon. I hope our concerns and comments are considered by this committee. I'd be pleased to take any questions.

The Chair: We have a brief time remaining for questions, colleagues. I would suggest probably time for only one question from each caucus. We'll begin with the NDP caucus.

Mr Lessard: I think you really hit the nail on the head with your brief. The government doesn't say that Bill 35 is headed towards the privatization of Ontario Hydro, but we share your suspicion that that is where it's headed and that although they're being very careful to stay away from saying that's the agenda — in fact they say privatization isn't part of their agenda — you can be sure that there's not going to be a referendum on this issue and that it is going to be an issue during the next campaign, because we feel if the current government gets re-elected, then that is going to lead to the privatization of Ontario Hydro. I want to thank you very much for your presentation here today.

Mr Gilchrist: Thank you, Mr Silano. I appreciate your taking the time to prepare your thoughts. You'll forgive me if I disagree with much of what's in there. If Mr Lessard wants to go into the next campaign with one of his major platforms as increasing debt for taxpayers and higher electricity costs, we'll be happy to take him on in that forum.

You bring up so many points, and we've only got a minute or so, but I just have to suggest to you that talking about employment at Bell Canada doesn't come close to talking about the telecommunications industry. There are thousands of new jobs at Sprint, AT&T and Call-Net. In fact, Sprint is about to build the biggest building in the history of Toronto on the Markham-Scarborough boundary.

You're right: There are increased costs for home service. At the same time, there have been massive new investments, as you would well know, in fibre optic technologies so we can handle the demand for fax and Internet and all the other new services that consumers are demanding. You couldn't do that over the old wires, and somebody has to pay for that.

You talk about Hydro being competitive. They have the third-highest rates in all of Canada. If it's so efficient, why are seven other provinces doing better than we are? While we're on the subject of cost, why is Toronto Hydro at \$92.50 for the average homeowner taking 1,000 kilowatt-hours when Hydro's at \$85.50? So much for efficiencies from size.

We don't have time to go through all your points. I'm going to leave you with one very simple question. I appreciate your perspective, but perhaps you could answer us why the Power Workers' Union is not only in favour of this bill but is interested in participating as a partner in buying or sharing some of those assets if privatization ever did take place, which isn't even contemplated in this bill.

Mr Silano: The only comment I would have in regard to your comment would be, first, with regard to the telecommunications sector and some of these new jobs that are coming up, true, there is some job creation. Has it offset some of the cuts? I'm not sure. What I am fairly certain of is that any of the jobs that have been created by Sprint, by MCI and what have you that have moved up into Canada to compete in the long-distance market, most of the jobs are in marketing and in the call centres.

I don't know if any of you have been to a call centre recently, but labour is referring to them as the sweatshops of the 1990s. You're strapped in with the headset, you're working on what's called the dialler system; it automatically dials out and automatically takes incoming calls. Every second you spend on this system can be scrutinized by any supervisor. They can tap into your call to listen to what you're doing, and I'm quite certain that they're not as high-paying as some of the Bell positions that we may have lost.

1430

Mr Gilchrist: I suspect the Chair is going to cut us off in a sec, so can you come to the question of the Power Workers' Union and their support?

Mr Silano: Yes, with regard to the Power Workers' Union and the fact that they are "in favour of this legislation," the Power Workers as a provincial union have workers throughout the province and I think they have some concerns obviously with what may take place in the nuclear industry. I don't want to speak specifically of

exactly why they are in favour, but I know they are somewhat in favour at least that the bill show signs of taking successor rights with the new Servco and Genco which will be created at Ontario Hydro. I know they are glad to see that at least in the bill there is some reference made to pension portability and what have you. But, again, we need to see that in the regulations and that was part of our recommendations. I think John Murphy is speaking sometime next week to the committee and he will elaborate further.

Mr Conway: Thank you, presenters. Just one question: One of the areas where I would expect as a consumer to hopefully see some benefit is on the distribution side, and forgetting entirely the participation of the private sector. I look at the distribution of electricity in the province and I personally remember a day four years ago when I signed on with a lot of other people to Bill 185, which was supposed to rationalize the distribution or create an environment where there could be some sensible rationalization of distribution as between two different parts of public power. It didn't happen; in fact what did happen was a nasty little bit of border war and litigation. The private sector had nothing to do with that.

I'm a consumer and I'm looking at that and saying, "Why didn't that happen?" because my intuition tells me that surely it would have been possible in places like Lincoln and many others in southern Ontario to reasonably and sensibly, between two parts of the public sector, rationalize this in a way that a lot of people thought possible. It didn't happen. What do you have to say to me as a consumer who's interested in efficiency and not hostile to public power but feels a bit betrayed by what didn't happen four years ago?

Mr Silano: I'll try to answer that question with the specific incident that you raised, that being Lincoln Hydro. I think there could have been something worked out there but I believe the MEA took a position that if Lincoln county decided to expand its boundaries into Ontario Hydro territory, Ontario Hydro and the Power Workers' Union had no successor rights and there should be no unionized workforce in place there. That was, from my limited understanding of the situation, what caused the PWU to enter into litigation, and I believe it's still one of the test cases that are out there. Again, I'm not from the Power Workers' Union and —

Mr Conway: I think I saw some of the same problem in the eastern Ontario ice storm of recent fame as well.

The Chair: I'm going to have to interrupt. Sorry, but we have to keep on track so that we don't get into difficulties at the end of the day. Thank you for coming before the committee today with your advice and your perspective on Bill 35. We appreciate it.

CONSUMERS' ASSOCIATION OF CANADA

The Chair: We are now calling representatives from the Consumers' Association of Canada, please. Welcome. Please make yourself comfortable. Before you begin,

please introduce yourself and your colleague for the Hansard record and begin any time.

Dr Peter Dyne: I am Peter Dyne, chair of the energy network of the Consumers' Association of Canada, and I am assisted here by our lawyer, Robert Warren.

The presentation I am going to make is a condensation, to some extent, of the material which has just been handed to you. If you want all the details, look at them afterwards.

The Consumers' Association of Canada, which we call CAC, is a volunteer organization engaged in a wide range of activities, with the objective of protecting the interests of consumers. CAC has had an extensive involvement in the restructuring of the energy markets in Ontario.

In this submission, CAC will concentrate on the principal criteria which should be used to assess the effectiveness of the legislation in protecting the interests of residential consumers. These criteria are:

- (1) whether the electricity market is truly competitive;
- (2) whether the Ontario Energy Board has powers which are sufficiently broad and flexible to protect the interests of residential consumers; and
- (3) whether the legislation ensures consumer involvement in the development of the regulations of the restructured energy sector.

Some background information on our constituency: Residential consumers consume approximately 70% of the electric power in Ontario. We are the major power consumers. AMPCO has got it all wrong. Collectively, residential consumers will pay the lion's share of the cost of Ontario Hydro's stranded debt and its stranded assets. Electricity is to residential consumers an essential commodity. They cannot live without it. They must be assured the safe, reliable delivery of electricity at a reasonable cost. Individually, residential consumers have virtually no bargaining power. That is in stark contrast to the major industrial consumers of electricity and the entities who would supply electricity in the restructured market. While residential consumers have a stake in the electricity market restructuring, they do not have the resources to influence how it is restructured.

CAC recognizes that the status quo is not acceptable. Ontario Hydro has operated as an unregulated monopoly. It has accumulated a staggering debt. It has paid insufficient attention to the safe operation of its nuclear plant. Significant changes in US legislation expose Ontario Hydro to competition. Drastic reforms of the electricity sector are required. CAC acknowledges that the direction of the government's proposed changes towards greater competition is both necessary and, if properly enacted, in the long-term best interests of residential consumers.

At the same time, however, residential consumers enjoy, under the existing system, the safe and reliable delivery of electric power at reasonable prices. The problems of Ontario Hydro seem, to the residential consumer, remote, and the need for drastic change has to be explained. More importantly, the government must be forthright in telling consumers that there is no assurance that the drastic change will result in reductions in their rates, particularly when the elimination of stranded debt and the cost of stranded assets are factored in.

There is, understandably, a focus on whether the restructuring of the electricity market will result in a reduction in the prices which residential consumers pay for electricity. Unfortunately, this focus on prices disguises the real issues. CAC has seen no credible evidence that prices for electricity are likely to decline in the near term as a result of the restructuring of the electricity sector. They will almost certainly not decline when the costs of stranded debt and stranded assets are factored in. There must, therefore, be a reasonable assurance that prices will decline in the longer term. In the short term, the important considerations are whether, in the new market, the interests of residential consumers are adequately protected.

As I have noted, CAC has been extensively involved in the restructuring of the energy market, both for natural gas and electricity. It has attempted to represent the interests of residential consumers in these complex issues. It requires considerable expertise to participate in a meaningful way and to have a realistic chance of affecting the shape and content of the changes in the energy market.

1440

CAC is realistic about its ability, as a volunteer organization, to have a significant impact on these changes. The details of the restructured energy sector, and in particular the electricity sector, are yet to be worked out. Those details will largely determine the impact of the restructuring on the residential consumers. The devil is in the details. This committee must understand that the process of working out those details can and will be captured by those with an economic stake in the restructured energy market. Those entities do not have the interests of residential consumers at heart. The inevitable result, I'm afraid, is that there will be more devil in the details than residential consumers would like.

CAC strongly cautions this committee, therefore, to be vigilant in ensuring that the legislation protects the interests of residential consumers, also allowing the full participation of consumer interests in working out the details.

To comment now on the Electricity Act: There are two key elements to the introduction of competition into the Ontario electricity market at the generation level. They are the separation of transmission and generation components, giving competitors access to the transmission system, and the establishment of the Hydro successor companies on a commercial basis to provide a level playing field between them and their competitors.

CAC submits that the structure created by the Electricity Act does not go far enough to ensure that there will be competition in the generation level. There are several reasons. While legislation permits competition, it does not establish a competitive market. The successor generating company will have a dominant market position, controlling about 90% of the generating capacity in Ontario.

There are two alternatives to addressing this problem. The first would be to break up Ontario Hydro's generating assets. The government has decided not to pursue that

approach. The second alternative would be the adoption of market power mitigation measures as part of the initial market design. CAC understands that the Market Design Committee is currently considering a range of mitigation measures, to be adopted *ex ante*, to ensure competition in generation.

Experience in other jurisdictions has demonstrated that unless the market power issue is addressed up front, we will simply not have a competitive market. The legislation should enable the government to impose *ex ante* measures to mitigate the market power of the successor generating companies. The measures must be in place before proclamation.

On the financial structure: The government will be the sole shareholder of the successor generating and transmission companies. The government has made clear in its white paper that it expects its electricity companies to earn a normal rate of return and to make dividend payments. It has made it clear that it will exercise its control in its role as owner and shareholder and will focus on bottom line financial results. Incidentally, the requirement that the Generation Corp and the Services Corp will earn a normal rate of return and to make dividend payments to the shareholder is not explicitly stated in the act and should be explicitly stated in part IV of the act.

The establishment of a level competitive playing field also requires that the new corporations have debt/equity structures comparable to their competitors in the private sector.

To the extent that the legislation cannot ensure a fully competitive market at the generation level, it must provide mechanisms by which adjustments to the market can be effected. Section 27 of the Ontario Energy Board Act permits the minister to issue to the board binding directives to address the abuse of market power in the electricity sector. While such a corrective power is necessary, it should not, in CAC's view, be exercised by the minister. The government, as the sole shareholder of the successor company, has a conflict of interest in issuing directives to address the abuse or possible abuse of market power. CAC recommends that section 27 of the OEB Act be amended to give the board the power to issue such directives.

The treatment of Ontario Hydro's enormous stranded debt arguably overrides, at least in the short term, all the other issues in the restructuring of the electricity sector. The government must be candid about its proposals to deal with the stranded debt. Residential consumers must be told how they are going to pay for it. CAC recommends that any special charges used to reduce the stranded debt be explicitly identified on each bill which the residential consumer pays.

CAC believes the success of the restructuring of the electricity sector, and certainly the success of competition at the retail level, will depend in large part on the ability of the municipal electric utilities to make a transition to a competitive market. The provisions of the Electricity Act dealing with municipal electric utilities are, in their simplicity, quite stark. These provisions mask, however, a

reality that for many utilities will be daunting. They will face an array of conflicting pressures. CAC believes the importance of the role of the municipal electric utilities requires the Legislature to be satisfied that the MEUs can deal with the competing pressures they will have to face in the restructured market.

To turn to the Ontario Energy Board Act, the OEB Act makes the powers of the board broader and more flexible. The powers granted to the board are critical to the protection of the interests of residential consumers, and therefore to the success of the restructuring. CAC supports the reforms in the OEB Act. The CAC urges this committee to resist any suggestion that the powers of the board are either too broad or too intrusive.

The CAC's observations on the OEB Act are directed to areas where the powers given to the board need to be clarified or expanded.

Sections 1 and 2 of the act contain the statements of the objectives of the board. This statement of objectives is important. The CAC's concern is that the board may not have been granted sufficient powers to meet those objectives.

To illustrate, the board is given the power to facilitate competition. The board does not, however, have the power to create competition. It does not, for instance, have the power to require divestiture of the generating assets of the successor to Ontario Hydro.

One of the board's objectives is to protect the interests of consumers with respect to prices. It is unclear, however, what powers the board has to do that.

The committee should be satisfied that each of the board's objectives can be linked to a specific power that is broad enough and flexible enough to allow the board to meet those objectives. How the board will carry out the powers will have a major influence on the success of the restructuring contemplated in this legislation. More importantly, from the perspective of residential consumers, it is how the board will carry out its broadened powers that will determine whether the interests of residential consumers will be adequately protected.

I stressed earlier the importance of ensuring that the interests of residential consumers are represented in the processes by which the details of the restructured energy sector are developed. That observation is particularly true of the activities of the board. Unfortunately, however, the legislation does not provide an adequate mechanism for ensuring that participation.

Section 29 of the act grants the board power to award costs to any participant in a proceeding, a power which the board has in the existing legislation. The board has in the past quite narrowly interpreted that power, limiting itself to awarding costs only in formal hearings. It is clear, however, that the board will be undertaking a number of informal, non-hearing processes to develop, for example, a generic set of conditions that will apply to licensing of energy brokers. The board has already issued an invitation to interested parties to make submissions to it on the conditions that should be attached to those licenses.

The board's interpretation of existing powers to award costs would mean that, for example, stakeholders representing the interests of residential consumers would receive no costs of participation in the informal process and so would not be able to participate effectively. By contrast, interests with a financial stake in the outcome of restructuring would be able to participate fully.

What is required, in CAC's view, is an amendment to the legislation to make the board's power to award costs both broader and more flexible. Section 29 of the act should be amended to broaden the meaning of the word "proceeding" to include any process, whether formal or informal, by which the board carries out the obligations assigned to it under the Electricity Act and the Ontario Energy Board Act.

CAC welcomes those provisions of the OEB Act giving the board licensing authority with respect to gas and electricity brokers. The unscrupulous marketing activities of a few gas brokers have undermined the confidence of the consumer in the retail natural gas market. These problems underline the dangers of precipitate deregulation of a market without extensive consumer protection and information activities being in place well before the introduction of competition. They underscore the importance of effective regulatory supervision.

1450

In conclusion, when the Electricity Act and the OEB Act are proclaimed, consumers will face a strange new world. Electricity will be priced and sold on an entirely new basis. Rates as consumers now know them will no longer exist. Electricity prices may change hourly as gasoline prices change daily. Consumers may pay the hourly price or some average price to be determined after the fact. This is a necessary consequence of a competitive electricity market. An enormous public information exercise will be required to explain and justify this revolution.

I will conclude by acknowledging that the Electricity Act and the OEB Act contain important and in many cases long-overdue reforms. They are an important first step. However, whether the legislation results in a restructured energy market which enhances and protects the interests of residential consumers will depend on whether a truly competitive marketplace is created, on the board having sufficient power to protect the interests of residential consumers, and on the ability of residential consumers to participate effectively in the development of the details of the new market.

Thank you very much.

The Chair: Thank you. We have three minutes for questions and answers for each caucus. We'll begin with the government caucus.

Mr Gilchrist: Thank you for coming before us today to make a presentation. I appreciate that you have offered a scenario here that includes your own admission that it takes people with great experience and expertise to perhaps come up with the most informed vision of where we're going to be as a result of passing this bill.

You made an allusion early on in your comments about the lack of involvement of consumers, and specifically

CAC. I don't think that was your intention, because obviously our making every accommodation possible to have representation by the CAC on the MDC —

Dr Dyne: Excuse me. What did I say that —

Mr Gilchrist: "Consumers don't have a voice in the process."

Mr Robert Warren: I don't think that is what Dr Dyne said.

Mr Gilchrist: I just wanted to make sure that everyone in the room was clear that the CAC has had an active involvement. You picked the person. We made sure they were on the MDC.

But let me just go on to my points, if I may, and invite your response. You comment about rates and the fact that there is no evidence — I think your exact words are that you've "seen no credible evidence" allowing you to conclude that prices for electricity are likely to decline as a result of restructuring.

So you haven't seen reports from the United States Department of Energy, for example, saying that as a result of the fact that every US state except South Dakota is doing or has done what we are intending to do, consumers — not businesses — will see an average reduction in the national price of energy of 12%, a savings of \$30 billion a year. I guess you didn't see that report.

You must not have heard Enron's submission where they talked about their expectation, but further showed — we love to have charts and graphs — that every industry that was formally regulated has seen price reductions of anywhere from 13% to 50%, whether it's trucking, railroads, airlines, long distance telecom or natural gas.

Dr Dyne: Can I comment on that?

Mr Gilchrist: Let me just finish my submission. You say furthermore that the rates will be subject to great volatility.

Interjection: I'd like to hear his comment.

Mr Gilchrist: So you obviously haven't heard the submission from the Toronto Futures Exchange, which talks about how selling commodity futures will guarantee that you won't see the volatility of the spot market.

I am left with a very simple question, I guess. You say you haven't seen any evidence for the positive things. Can you table with us evidence that somehow your worst-case scenario is going to come to pass?

Dr Dyne: First of all, the comparison of electricity to transportation and to telecommunications is irrelevant. It's hocus-pocus. The question is what will actually happen in Ontario. And the question about the reduction in rates in other jurisdictions is very much jurisdiction-dependent.

For example, people will say that rates have gone down in the UK. In fact, rates were legislated as being constant and would increase by the consumer price index for five years so that they went up exactly as the consumer price index.

I'm aware of the sort of comments that you say people claim. I'm very suspicious of all those. You have to look very much at the fine print and what in fact was the financial status of the organization which was being deregulated.

Mr Warren: I'm not sure, frankly, how the member would have reacted to a brief that was hostile to what the government initiated.

Mr Conway: Stick around.

Mr Warren: I do think it's fair to observe, though, that a close reading of what Dr Dyne has written is that the CAC doesn't believe that rates will decline in the short term, and in the long term there is reasonable evidence to believe that they will decline.

The Chair: To the official opposition.

Mr Conway: Gentlemen, I want to come back to a central point that you make in your presentation; namely, that the broad base of residential consumers have a very real interest, obviously — they are the largest single rate category — but their interest is so diffused as to be less powerful than others with a much more focused interest.

You would think normally that the protection of the broad base of interest, the residential interest, would be in government, and I think to some reasonable extent it will be, except there is this problem in Bill 35 that the government has a real interest, a real commercial interest, not only as the principal shareholder in the early going at least of Genco, but also the exchequer, because some of the special payments, once the stranded debt is retired, continue under the provisions of the bill, as written, to the credit of Her Majesty's provincial treasury.

Dr Dyne: Correct.

Mr Conway: My question is, what measures should this committee consider to mitigate the conflict of interest in which government finds itself in the implementation of this policy?

Dr Dyne: The suggestion I made was that the government's participation as the owner and shareholder should be at arm's length from the government and essentially that the regulatory activities of the board should be again somehow or other at arm's length from the government. That's the only solution I can offer. It's a very real problem.

Mr Conway: I can see how that would be helpful on some of the issues around part of the problem, but on the financial side — for example, how you would define the stranded debt, how you would apportion the stranded debt, how you would select from the basket of instruments, and when you decide the stranded debt is no longer there — obviously you have a very real interest for government because once all of that is decided, I, the referee, start to recoup what are going to be hundreds of millions of dollars, presumably. What mechanism would you recommend to deal with the problems around the financial conflict of interest in which government will find itself?

Dr Dyne: This is in part a response to Mr Gilchrist, because —

Mr Conway: Don't point at him. It will only inflame him.

Mr Gilchrist: Only the Liberals are capable of that.

Dr Dyne: I'm sorry; it's rude.

The requirement that the successor companies pay taxes and pay a dividend is a necessary requirement to make it a level playing field. So those are increases in

cost, and I suspect they are large increases in cost, which have to be paid. I understand the government is going to use those revenues to pay down the stranded debt. After that, yes, the government is going to be making half a billion to a billion dollars a year out of Ontario Hydro. More power to them. That's what we are stuck with.

Mr Conway: On stranded debt, how important is it from the residential consumer's point of view that this committee get some greater detail around the size, the extent and the disposition of the stranded debt before we conclude the proceedings in disposing of Bill 35?

1500

Dr Dyne: The simple answer is that we are just wasting our time discussing the details of this legislation until the finance department comes clean with what the cost of the stranded debt is.

Mr Lessard: I hope we're not wasting our time this afternoon, because I'm very interested in the submissions that you've made, as far too often we don't hear from representatives of consumers. For most residential consumers, the details in Bill 35 are just overwhelmingly complex. What their final objective is and what they really want to see is reliability of supply at the lowest price. My colleague Mr Gilchrist can come up with all the charts and graphs he wants and say: "Consumer rates are going to go down. Trust us." I'm more inclined to rely on the view of the consumers' association, who say, "There's no assurance that rates are going to go down." I want to ask you whether you feel that it is imperative for us to have the regulations, the framework, as to how the price is ultimately going to be determined before we pass Bill 25.

Dr Dyne: With respect, if you have a competitive electricity market, the price cannot be regulated. Tough. The government essentially has no power to regulate. If it did, there would not be a competitive market.

Mr Lessard: The Market Design Committee, in its report, says they're going to have some mechanisms to regulate. This isn't deregulation, this is re-regulation. This is regulation in a different form, I guess.

Dr Dyne: Excuse me. There are a vast number of regulations which have to be put in place, but a simple regulation of the price of electricity, that regulation, that it shall be 5.6¢ per kilowatt hour, cannot happen.

Mr Lessard: Why not?

Dr Dyne: Because we have a competitive market, and the price is determined by competition between the generators. That's what is supposed to happen.

Mr Lessard: Do you think it will?

Dr Dyne: Do I think — excuse me? The legislation and the plan for a market pool make it quite clear that the price of electricity is going to be determined by competitive bids from generators, and those cannot be regulated.

The Chair: On that note, as Chair of the committee, I thank you for coming before us this afternoon with your perspective on this bill. Your ideas will be considered. Thank you.

TORONTO HYDRO-ELECTRIC COMMISSION

The Chair: I now call representatives from Toronto Hydro. Good afternoon and welcome. Please make yourselves comfortable. As I'm sure you already know, you have 30 minutes for presentation time. I hope you'll leave time for questions at the end. Before you begin, please introduce yourselves for the Hansard record.

Mr Mark Anshan: Thank you, Madam Chair and members of the committee. My name is Mark Anshan and I'm chair of the Toronto Hydro-Electric Commission. With me today, I'm pleased to introduce John Alati, a member of our commission; Blair Peberdy, vice-president of communications and corporate planning; and Hilda Mackow, our senior vice-president for customer and energy services. Thank you for providing Toronto Hydro with this opportunity to address your committee.

The Toronto Hydro-Electric Commission is a municipal electricity distribution utility serving approximately 650,000 customers in the city of Toronto. As you well know, in January this year the utilities of the former cities of North York, York, Scarborough, Etobicoke and Toronto and the borough of East York were amalgamated under Bill 103, the City of Toronto Act. This amalgamation created the fourth-largest electricity utility in Canada and the second-largest municipal distribution utility in North America. The new Toronto Hydro now distributes approximately 25% of the electricity in Ontario, has annual revenues of approximately \$2 billion, has a peak load in excess of 4,500 megawatts and employs 1,900 people in a variety of professions and trades.

Toronto Hydro is unique in many ways. Not only are we one of the largest electricity industry stakeholders by far, but our roots go back to the earliest days of public power in Ontario. The original Toronto Hydro was formed in 1911 and all the Metro-area utilities have been successful examples of the benefits of public power. We have contributed to the economic and social growth of Metropolitan Toronto and the province. We have provided safe, reliable and low-cost power to our customers for many years.

It is important to note that in the midst of these discussions about industry reform, we are dealing with the amalgamation of six utilities with different distribution systems and cultures.

Toronto Hydro's cost structure, measured in gross margin, is now at 15%, which compares with other MEUs across Ontario, even those utilities that are a fraction of our size and do not serve such a dense urban area as the city of Toronto. Simply stated, gross margin represents our overhead costs. Other municipal utilities don't have to cope with the traffic congestion downtown and the heavily treed, narrow residential streets that our utility faces. The cost of operating in a dense urban area is higher than in suburban municipalities. Development charges were also not available to the former Toronto Hydro.

We have already saved more than \$30 million through amalgamation by reducing staff levels by approximately

20%, or 500 employees. Further significant savings will be achieved over the next few years as we rationalize our operations and sell surplus properties and assets. This is good news for Toronto electricity consumers. But we believe that the real benefits should come when we have competitive supply choices. After all, more than 80% of our costs are driven by wholesale power prices. We believe that our purchasing strength will enable us to negotiate cheaper wholesale power prices and to develop environmentally friendly, competitive cogeneration options.

The changes taking place at Toronto Hydro are immediate and profound and they touch every employee. We are successfully accomplishing the consolidation while maintaining seamless, high-quality service to the public. The challenges in achieving this are considerable, but we are well positioned to participate successfully in the new electricity market, including retailing, wholesaling and related energy businesses.

The delivery of safe and reliable electricity to Canada's largest urban, cultural and business centre is foremost in our minds. None of the other municipal utilities or industry stakeholders are facing the tremendous challenges that Toronto Hydro is addressing. The realignment of our operations and the introduction of advanced information systems technology are keys to the success of industry restructuring. These are important facts that should be recognized by your committee and the government as you move ahead. Toronto Hydro is a key participant in Ontario's energy industry. The success of industry reform may well depend upon our ability to implement the changes you legislate in a manner that does not impact in a negative way on our customers in the city of Toronto.

The principles of Bill 35 and the regulations and market rules that will be developed to foster competition should, if carefully crafted, result in more choices and lower rates for customers. However, change must be introduced carefully and phased in at an ambitious but measured pace. Toronto Hydro must be able to implement the changes that are introduced without compromising the integrity of our distribution system or the service we provide to our customers. To this end, we offer the following comments and recommendations to assist you in your deliberations.

First of all, we recommend that the local distribution companies be allowed to compete for their customers on an equal basis with retail suppliers.

Secondly, we recommend that local distribution companies be taxed on the same basis as other companies operating under the Ontario Business Corporations Act, based on annual income rather than gross revenues.

Third, we recommend that green energy options, including emissions cap and trade provisions and the requirement for generators to provide a percentage of renewable energy as part of new generation proposals be introduced under Bill 35 to support the reduction of CO₂ toxins and other greenhouse gas emissions.

Finally, we recommend that industry reform be introduced at an ambitious but measured pace that will enable

industries to provide seamless service to customers at competitive costs.

We believe that the economic interests of our customers will best be served by the introduction of wholesale and retail markets. The creation of a truly competitive wholesale market must be the premise upon which a retail market evolves. Consumers should have retail options, and this should lower rates.

We support the provision in Bill 35 that municipal utilities must incorporate under the Ontario Business Corporations Act. This will provide a greater ability to offer our customers more services and to enter into partnerships to provide consumers with a wider range of products and increased convenience. For example, Toronto Hydro has successfully developed a fibre optic cable network in our underground cable ducts downtown and across parts of Metropolitan Toronto that connects our control centres and substations. This network has increased the reliability of electricity supply to our customers and it has enabled us to lease excess fibre optic capacity to public and private organizations in Toronto. All parties are benefiting from this innovative use of our distribution system.

1510

OBCA incorporation will enable us to maximize our engineering and technological capabilities to the advantage of our shareholder and customers. The former Toronto Hydro first requested commercial status back in 1995 when we addressed the Macdonald committee. We are pleased our model has now been adopted in Bill 35.

The success of the new competitive market will rest upon the ability of the government to create a truly competitive market for participants. We believe that Toronto Hydro should be allowed to compete. We are confident in our ability to do so. Toronto Hydro will be one of the few Ontario-based, Canadian utilities that will have the critical mass and cost-efficient resources to compete in the new market. We believe that it is important to the credibility and success of the market that incumbent utilities be allowed to compete for customers but that they do so on an equal basis with new entrants. We do not believe that the public interest will be served by restricting incumbent utilities from competing for their customers. This would limit the options available to consumers and dampen competition.

In a truly competitive market, all players are subject to the same rules and regulations. The rules of Ontario's new electricity marketplace should not be created in such a way that they favour private sector firms to the detriment of government-owned electric utilities such as Ontario — er, Toronto Hydro. I suppose Ontario Hydro as well. We have expressed this concern to the Market Design Committee and we are working with them to ensure that the new rules are truly competitive for all utilities.

Section 87 of Bill 35, if passed in its current form, will require municipal utilities to pay taxes that are based on their annual adjusted gross revenues. On the other hand, private corporations are taxed on their levels of annual income. This provision of Bill 35 is anti-competitive for

the industry because there is a disparity between taxes based on gross revenue and those based on income. Taxes based on gross revenue and the transfer taxes contemplated in Bill 35 will result in increased electricity rates to consumers. Fairness in the market will be achieved if all competitors are taxed equally. We recommend that Bill 35 be amended to ensure that all competitors pay taxes on the same basis.

This summer a large part of Ontario faced air quality advisories and smog alerts during heat waves. In the midst of a smog alert in July, Toronto Hydro adopted aggressive CO₂ reduction initiatives to reduce air pollution by offering our customers green energy choices. Based on our customer research, we know that there is a market for green energy and we intend to play a leadership role in offering this option to our customers. There are a number of renewable energy sources, cogeneration and energy-efficient opportunities that Toronto Hydro makes available. These local generation projects will continue to contribute to our ability to offer environmentally superior supply options to our customers while meeting our ambitious CO₂ reduction goals. We are leaders among municipal utilities in our environmental management programs.

However, in order for us to continue to do this on a competitive basis, all energy suppliers should be held to the same strict environmental standards. The committee may wish to consider including such a provision in the act. To this end, we support the introduction of cap and trade emissions standards to ensure that industries will reduce their emissions. It is hoped that the full life-cycle cost of the generation source will be factored into the emission trading formulas, because generation has an impact on society that reaches far beyond the environment.

We are also seeking clear direction as to what constitutes green or renewable energy and what will be the requirements of individual distributors to provide renewable energy to their customers. We would like to see each generator selling into the pool blend a percentage of renewable energy into each proposal for the development of new generation. This should be a licensing requirement.

Toronto Hydro believes that we can achieve customer choice and the diversity of electricity supply within the timelines set by the government. It is essential that the restructuring be phased in at a pace that will enable the utilities to adjust their systems and procedures so that the transition to the new marketplace is seamless to customers.

The intent of Bill 35 is to provide choice and the benefits of competition to Ontario's electricity consumers. Our customers will determine whether the restructuring has been successful. They will make this decision based on the logic and clarity of the changes that are implemented and whether or not these changes have resulted in lower energy prices and increased choice and convenience.

Local distribution utilities have a positive, long-standing relationship with the public based on stability, reliability and accountability. We bring a high degree of public trust and expertise to the market that has been

developed over many years. Of all the stakeholders in this multibillion-dollar industry, the municipal utilities like Toronto Hydro are best able to lead consumers into the new marketplace and help them take advantage of the benefits that competition will provide.

To achieve this, reforms should be implemented at a steady but measured pace that will enable us to address the complex information systems and metering issues that are an inherent part of large, modern, urban distribution utilities. Competition and choice can be introduced quickly without dismantling the core business systems and customer interfaces that enable us to operate our utility, and we look forward to assisting the government in achieving these goals in the months ahead.

Toronto welcomes the opportunity to compete in this exciting new market.

The Chair: You've left five minutes for questions from each caucus. We'll begin with the official opposition.

Mr Phillips: Thank you very much for your presentation. I want to focus first on the taxation issue, just to make sure I have it right, and see if we can't resolve it.

As I understand your recommendation, as the bill is currently written — let's take Toronto Hydro — you will be required to pay the Ministry of Finance annually a tax that will be determined as a percentage of your gross revenue. That's a new tax that you currently don't pay and that will be a tax paid by the shareholders of your company, namely, the residents of Toronto. The reason for that tax, I gather, is so that private sector companies that may be competing, that are paying a corporate income tax, will not be disadvantaged. The problem with that is that your shareholders have already paid over decades for your assets, they've invested in those assets, and now, as I understand what you say, the city of Toronto taxpayers will have a new tax to pay, namely, this gross revenue tax. You're suggesting that it should be simply a tax on gross profits, the same as it would be for a private sector company. Am I interpreting that correctly?

Mr Anshan: That's right. We're not saying that taxes shouldn't be levied on all players in the industry but that they ought to be levied on the same basis.

Mr Phillips: Why do you think the bill is written in the way it's written here instead of the way you would like to see it written?

Mr Anshan: I can't answer that. I think you'd have to ask the minister. Maybe it was an oversight. Perhaps it was just a flaw in the drafting, but it's something that we think should be given careful consideration.

Mr Phillips: Or is it the expectation that traditionally you would not be looking to make a gross profit at Toronto Hydro?

Mr Anshan: No. We anticipate, on the competitive side of our business, that we would be earning revenues for our shareholder, which would be the city of Toronto.

Mr Phillips: I appreciate your raising this with us. I think it's an important issue and maybe the government will be able to clarify it.

One issue you didn't touch on in your brief is one we've had a lot of comments on here, and that is the plan in the bill for Genco, the generating company — essentially, Ontario Hydro will retain all of its generating capacity rather than there being some break-up of that generating capacity. Is Toronto — and there are many who have come before us — concerned that that will mean there isn't competition for people like yourselves to purchase electricity? Has Toronto Hydro had an opportunity to review that and do you have a position on that?

1520

Mr Anshan: We haven't taken a formal position on that, Mr Phillips, but we have been considering that. As I've indicated, we think the introduction of a retail market is premised on having a robust wholesale competitive market as well. That may well mean looking carefully again at what's happening with the Genco situation, but we haven't taken a formal position on that. Clearly, as the one player so far in Ontario that accounts for 25% of the power, we think we're going to have significant purchasing power, if you will, in the market and that we will have some influence ultimately on wholesale power prices.

Mr Phillips: Right. In terms of timing, I think most people want to get on with change. There's an appetite by virtually everyone to get on to modernizing our energy sector, our power sector. You're indicating some concerns in here about the pace of change. There's always a balance, because if you allow an unlimited amount of time for change, change probably never takes place. Are there specifics where you think the timetable is going to be impossible to meet, that we really need to re-examine the bill in that area?

Mr Anshan: I wouldn't say it's impossible to meet. We're trying to raise a flag of caution with respect to the technological changes that need to be brought into place. One of the special interests we have, from the Toronto Hydro perspective, is the fact that in addition to dealing with the introduction of the competitive marketplace we're also dealing with amalgamating six companies, six former utilities, into one, and we need some time and ability to integrate the systems we've inherited from the six into one, particularly in the high-tech areas, computer areas and customer information. We think it's possible to do within the time frame, but we raise it as a note, and it's probably worth some discussion between us and others who are managing this process.

Mr Lessard: You've mentioned in your brief some proposals in dealing with green and renewable energy. The government likes to remind presenters that there's a market out there for green and renewable power and that if you provide it people will buy it and they'll pay extra for it. It's sort of a variation of the "Build it and they will come" scenario. I think there are some financial disincentives there for persons to make those choices and that there needs to be something in the act or in the regulations to encourage the provision of green and renewable energy alternatives. If that's not done, that segment of the market won't expand and any jobs that may be related to the growth of that market won't be there either.

Do you feel that that's something which, if Toronto Hydro offers it as a service, people will buy it no matter what the price? Or is that something you think needs to be a required percentage of your mix of services?

Mr Anshan: As I indicated, we do favour that, we are marketing that, but there's a price point for everything in terms of consumer choice. Not every consumer is going to buy it at whatever price you sell it. There is a price point. We want to be competitive with respect to that product mix. If the government as a matter of policy wants to encourage green power in this province, our recommendation is that there be a level playing field between all suppliers of energy and that in their portfolio mix there ought to be a requirement for a certain percentage of that to include green power.

Mr Lessard: You're asking for some direction about what constitutes green power. I'm asking whether you can undertake to provide us some direction as to what you may consider green power as well. That's not something that's defined as yet and I'd like to see how you may define it.

Mr Anshan: I'm certainly happy to undertake to do that and to provide the committee with something in writing on that subsequent to today's hearing.

Mr Lessard: Great. Yesterday we heard from someone who was suggesting that there needed to be a commodities futures market for electricity contracts. I asked him if that was something that I as a residential consumer may be interested in taking advantage of so that I could get lower rates as a result, and he said probably not. But I suspect that Toronto Hydro may be big enough that that's the sort of market they could get into, electricity futures contracts. Is that something you've looked at, an area where you would see yourself participating, and do you think that it's got some benefit?

Mr Anshan: We are looking at it. We're looking at the whole question related to power procurement, of how we will enter the market to buy and purchase our power requirements for our customers. It may be of benefit, depending again on how it's managed and whether or not one has the expertise and abilities and skill sets to manage that process. Some people have gotten quite hurt in these kinds of markets in other jurisdictions. We don't intend to do that. We're going to enter it carefully and methodically but we're certainly looking at it.

Mr Gilchrist: Thank you, Mr Anshan and colleagues. It's good to see you again. I must say I'm somewhat intrigued by the slightly different position you've taken from many of the other MEUs that have come before us. I think you've taken a more balanced approach, particularly in connection with the response you just gave to our opposition colleagues about the need to break up Genco and whether or not that is necessary to see a competitive market ensue.

I'll just deal with a couple of the things you've raised here. Let's talk about the tax issue. Would you agree with me that right now all of the taxpayers in Ontario, having guaranteed Hydro's debt, are on the hook for the debt that is on Hydro's books?

Mr Anshan: Unfortunately.

Mr Gilchrist: "Unfortunately" is exactly the way to phrase it. Moving forward from here, knowing that the debt won't increase but it still has to be paid off —

Mr Anshan: A portion of it.

Mr Gilchrist: Ultimately we would like all of it to be paid off. It's somewhat irrelevant, if it's all embodied in that total cost that the customer is paying right now, how you split up the pie. Would you agree with me that whether you arbitrarily say it's a Hydro penny or a Toronto Hydro penny, if Toronto Hydro pays it, the Ontario Hydro or Genco price is reduced by a corresponding amount? If you're still able to deliver to the customer for exactly the same price, it's really quite irrelevant where in the equation the tax is generated?

Mr Anshan: I would agree with you, provided that the other wholesale suppliers who are competing with Ontario Hydro are paying the same rates on the same basis.

Mr Gilchrist: We would agree with you on that. If there were a circumstance where any supplier were to create a non-profit situation that would otherwise not entitle the government to make any taxation demands upon them, under the normal circumstances under the Business Corporations Act we would lose our ability to take funds and funnel them in through the account to pay off the debt from that particular company.

Mr Anshan: They'd also be out of business, probably.

Mr Gilchrist: No, they could run as a non-profit. If they balanced it exactly so that —

Mr Anshan: We don't expect to be running as a non-profit, though.

Mr Gilchrist: No, but you would agree with me if someone did that —

Mr Anshan: I suppose. Theoretically, yes.

Mr Gilchrist: If I were to say to you that first off the bill considers it a "might," not necessarily the case that there would be the tax on gross revenues, and that every penny that went from that tax paid down part of the debt so that Genco's cost to you would be reduced by an equivalent amount, you would still be able to deliver, net to the customer, electricity at the same price.

Mr Anshan: I'm not sure. But if you can structure it in such a way that we can remain competitive with other energy suppliers who are going to enter the city of Toronto market, then we won't have a problem with that.

Mr Gilchrist: That's certainly our goal.

Mr Anshan: I'm just raising it as a flag to you because our reading of it is that it may not work out that way and we're just wanting this committee to be aware of that.

Mr Gilchrist: That's the benefit of these hearings and we've certainly heard a wide variety of submissions from companies which have taken very different perspectives.

You're much bigger than not only any other MEU but almost all the other MEUs put together. We've had interesting discussions about the need for them to develop economies of scale. What would your position be in terms of whether or not somebody with 800 customers or 1,200 customers is going to be able to compete with any kind of competition, whether it's with Servco or with a private company? Is that a realistic expectation or should they be

moving to do what you've now done, maybe not by choice, but what has taken place in Toronto?

1530

Mr Anshan: Excuse me, Mr Gilchrist, I think it was your government that did that.

Mr Gilchrist: That's right, my minister.

Mr Anshan: In any event, I understand your question. I would answer that theoretically it would be very difficult for a utility with 800 customers to be able to compete effectively with a utility our size. Having said that, I remember recently reading in some of the literature that there are utilities that could be considered to be virtual utilities, where all you have essentially is a small group of managers who basically manage outsourcing contracts and manage utility. I'm not going to engage in what I think are the more political discussions of what goes on in rural Ontario in terms of the rationalization of utilities. I think I'll leave that to the MEA and others to debate with you.

Mr Gilchrist: Fair enough.

Mr Anshan: But clearly as a matter of theory I think you're right.

Mr Gilchrist: Thank you. As a final point to you, and this isn't quite so theoretical: If you were buying or selling to anyone, would you expect your assets to be sold at your book value or at their fair market value? If you sold them at anything less than fair market value, have you in effect increased your debt if you were in an existing debt situation?

Mr Anshan: I think that's a difficult question to answer.

Mr Gilchrist: No, this is a real-world question. If you wanted to buy Pickering Hydro, just as a for instance, would you expect to pay the value of their generating stations, their wires and the value of what their retail customers are worth, or would you expect to get some kind of a deal at the expense of Pickering taxpayers?

Mr Anshan: No, I think it would be more what the amortized price would be of those assets at the time you went to buy them. If the book value has been properly calculated, then that might be —

Mr Gilchrist: You know that the book value — you take straight depreciation on certain assets that may or may not strictly conform with the life cycle or whether or not they've been well maintained or poorly maintained. You would do an appraisal of those assets and you would come back and say to Pickering, "We believe the value of what you've got less the liabilities is X," would you not?

Mr Anshan: Yes.

Mr Gilchrist: You don't really care what they're carrying on their books. You would say, "What it's worth to us, knowing that we could make X million dollars more in revenue, is Y dollars for the assets." Would that be fair?

Mr Anshan: I suppose that people buying those kinds of assets will look at it and make the kinds of judgments you make, and then the market will determine, if there's more than one buyer, what the price should be, just as you buy any other kind of asset.

The Chair: Thank you very much for coming before the committee this afternoon. We appreciate hearing your advice on this bill.

SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES

The Chair: Calling representatives from the Society of Ontario Hydro Professional and Administrative Employees, please. Good afternoon and welcome.

Mr John Wilson: My name is John Wilson and I'm the president of the society.

Ms Leslie Forge: Leslie Forge, vice-president of the society.

Mr Wilson: We're here on behalf of the 5,500 professionals at Ontario Hydro. We appreciate this opportunity to appear before you.

Our members are responsible for ensuring and helping with the smooth and successful transition to competition, and our members' interests are aligned with those of ratepayers, because if Ontario succeeds, our members will succeed.

I won't take you through every word in the little blue book that I just passed out. I'll try to do a précis of some of those highlights and you can decide where you want to go into more detail. Over the next few minutes I'd like to look at two areas. The first is the changing marketplace and the second one I'd like to address is some workforce transition issues.

In the changing marketplace I'd like to look at market size, Ontario Hydro's successor companies, how the playing field should be levelled and two other concerns: privatization and incentive regulation. We'd like to look at whether Ontario is going to get its fair share of the electricity market; the parts of Bill 35 that disadvantage Ontario Hydro's successor companies in relation to out-of-province suppliers; focusing too narrowly on the Ontario market in relation to the broader North American market; and some amendments to level the playing field and allow an opportunity for the province of Ontario to succeed.

We'd like to look at the competition, how they're preparing to compete and then look at how Ontario is preparing to compete. We'd like to see Ontario Hydro's successor companies and note how they and the competition should be treated so that they play under the same rules.

Finally, looking at workplace transition issues, we'd like to look at two areas: transfer orders that move people from Ontario Hydro to a successor company, and pension provisions of Bill 35 as they apply to the existing Ontario Hydro pension plan and its successor plans.

In addition to that, we'll note some recent society-commissioned polling results done by Environics that support the recommendations we'll make. Over the past little while, Environics results show that the people of Ontario say that electrical industry restructuring must

ensure the delivery of safe, reliable and low-cost electricity to Ontarians; protect the financial position of Ontarians and provide a fair return on their investment in Ontario Hydro; position Ontario to compete successfully in the North American and global marketplace; protect Ontario's generation assets against foreign control; enhance Ontario's overall competitive position; and finally, promote energy efficiency, sustainable development and protect the environment.

First, let's have a look at the changing marketplace. I'd like to say at the outset that we understand that the monopolies in the generation and retail wing of utilities are no longer viable and that no one is for the status quo. Competition is on our doorstep. When we take a look at the market that's happening, that's coming here, I'd like to make one statement, and that is that the market is North American and that this market is changing at lightning speed. Very soon Ontario will find itself with massive foreign companies hungry to expand their already large market shares. The real question here is, will Ontario Hydro's successor companies be large enough and strong enough to compete with these people and win? Some of the representatives of those companies will be appearing or have appeared before you.

Critics of Bill 35's decision to keep Ontario Hydro's generation assets in a single company contend that these assets need to be broken up to mitigate Ontario Hydro's successors' market power. This argument falsely assumes that the electricity market is limited to Ontario. The market is North American. In northeastern North America, Ontario Hydro has a market share of less than 15%, hardly enough power to manipulate it. The northeastern and Midwestern markets will become even more tightly intertwined. We all noticed that during the big spike that happened just several weeks ago.

Our share will drop. For instance, one of our competitors, Hydro-Québec, is now spending \$13 billion to increase generation and transmission to permit massive exports into Ontario and the United States.

In Ontario today we have a \$10-billion electricity market annually, with spinoff benefits for the province. These spinoff benefits will multiply as electricity, telecommunications, gas and information technologies converge. If we aren't able to compete in this market, we will be importing products and exporting jobs.

Size matters in the larger market. It gives an edge to competitors. It gives them economies of scale, it gives them deep pockets to have diversified investments and it lets them strategically coordinate their assets. All across North America, industry executives confirm this conclusion. We've had the 1998 Electric Industry Outlook by the Washington International Energy Group. Some 82% of all the executives surveyed said there would be less than 100 North American generating companies in 10 years, 45% said there would be less than 50, and many said there will only be 10 to 15 large generating companies left when the dust settles.

We can see that happening. There have been over \$3 billion of mergers in the energy business in North America

in the last two years alone. Let's look at some of them. Hydro-Québec has purchased Noverco, the parent company of Gaz Métropolitain, and now controls almost all of the gas distribution in the province of Quebec. Duke Power has merged with PanEnergy; American Electric Power with Central and South West. The trend is clear: The competitors are getting larger and they're getting more diversified.

1540

We should have a look at what Quebec Premier Lucien Bouchard said when Hydro-Québec acquired Gaz Métropolitain: "Concentration of supply, distribution and transportation of energy into the hands of large consortiums is a worldwide trend, and Hydro-Québec has to keep up with the competition." Let us hope Ontario can keep up with the competition.

Bill 35 does not require consideration of the broader North American and global context when market power issues are addressed. There is a danger that the Ontario market will be viewed in isolation. We recommend that Bill 35 be amended to require consideration of the North American and global energy markets when addressing market power.

Let's look at what's happening with generation in Ontario. Alone among all the major players in North America, the big ones, Ontario has decided to break up its electricity company into smaller, independent pieces. The fact is that even before Bill 35, there was a tidal wave of mergers and acquisitions, and Ontario Hydro was swept out of first place as the largest utility in North America, down the list. Bill 35 will move Ontario Hydro's successors considerably further down the list.

Bill 35 has a provision to keep all of Ontario's generation assets together. We believe this is Ontario's only chance to achieve competitive success, but we believe these provisions have to be strengthened. We believe that a forced licensing agreement or asset swaps will adversely affect Ontario's competitiveness. Leasing the operation of generating plants is divestiture by the back door. Leased assets are not commonly controlled and directed. Asset swaps involving actually transferring ownership and control to different jurisdictions will be equally harmful.

The fact is that Ontarians strongly oppose foreign control of their generation plants that would likely result from an asset swap. When questioned in the latest Environics poll, 68% of Ontarians disagreed with the idea of asset swaps and 84% wanted Ontario's electricity supply to be protected from foreign ownership and control.

The society would say it's time to stop thinking small and start thinking big in the global arena. The people of Ontario have invested a lot of money into our electrical system over a 90-year-plus period and they need a fair return on their assets. We recommend that Bill 35's provisions for keeping Ontario's generation assets together be strengthened.

One of the most important measures we can take to pay down outstanding debt, protect our investment and prepare for competition is to rehabilitate the laid-up reactors at Bruce and Pickering and return them to service at world-

class levels as soon as possible. Hydro's rehabilitation will provide Ontario with a major advantage over foreign competitors. Nuclear reactors are costly to build and very inexpensive to operate, especially when compared to fossil fuel, the main energy source for our American competition. It's largely because of Ontario's large nuclear capacity that Resources Data International determined that of the 32 utilities in northeast North America, Ontario Hydro is the lowest-cost generator at the margin.

The returns we will get back will also be environmental if we rehab those reactors, because this will radically reduce greenhouse gas emissions. That will line us up with what's happening with Bill Clinton in the United States. Energy swapping is enabled by Bill 35 and it will help us meet our commitment in Kyoto to reduce those emissions. The society recommends that Bill 35 be amended to permit the Generation Corp to rehabilitate, own and operate the laid-up Bruce and Pickering nuclear stations.

Now let's look at a level playing field. Whether Ontario succeeds or not will depend on the kinds of rules it imposes on the people who come from here and play here. Genco and Servco represent Ontario's best chance for success in the North American market. If they do not succeed, Ontario will not succeed.

We're concerned about two major issues. They are stranded debt and reciprocity. If Genco and Servco do not have a sustainable financial footing, they will fail if they have too high a debt burden. They will also fail if they are prevented from selling into markets outside Ontario while competitors from these markets are allowed to sell here.

Bill 35 gives no discretion on how much debt is transferred to Genco and Servco. There is too much at stake to allow decisions affecting Ontario's economic future to be made without any direction. In the most recent Environics poll, 81% of Ontarians said it was important that Ontario Hydro's successor companies be put on a financial footing that would enable them to compete with suppliers from the United States and Quebec. We recommend Bill 35 be amended to direct that the amount of stranded debt transferred to Genco and Servco is such that it places them initially on a sound financial footing.

Equally important is reciprocity. Quebec has opened up its wholesale market but it has not opened up its retail market. Michigan will not allow retail access until the year 2002. If Hydro-Québec and Detroit Edison are not required to open up their markets to Ontario suppliers, these utilities will use their captive retail base to sell surplus into the Ontario market at salvage prices. This will have a devastating effect on Genco's competitive position because it is a certainty that Genco will lose share in Ontario. We recommend that Bill 35 be amended to provide that out-of-province electricity suppliers not be allowed to sell into the Ontario market before Ontario suppliers are allowed to sell into their markets.

We have two other concerns: privatization and incentive regulation.

Ontarians have consistently said they oppose the privatization of Ontario Hydro. As currently written, Bill 35 allows privatization to occur without the approval of

the Legislature. Initially the government will hold all the shares, but there's no guarantee that this will stay the case. It's also possible, under the existing provisions of the bill, that Servco and Genco could decide to sell off their assets in whole or in part to private investors without legislative consent. We recommend that Bill 35 be amended to prohibit selling all or part of Genco or Servco without legislative approval.

On incentive regulation, just a word of caution. We do not oppose incentive regulation but we would like it to be such that it looks at the long term as well as the short term. We recommend that Bill 35 encourage an efficient and effective electrical system that does not undermine safety and reliability or harm the environment in the short and the long run, to provide guidelines to the OEB on incentive regulation.

We looked at the changing marketplace, we looked at market size, we looked at the competition, we looked at Hydro's successor companies, and size does matter there. We looked at levelling the playing field, we looked at the amount of debt that should be placed on Genco and Servco, and at reciprocity, privatization and incentive regulation.

Now we'd like to just take a moment and look at some workplace transition issues. There are two of them. The first one is transferring people from Hydro to its successor companies, and the second one is the Hydro pension plan and its successors.

Bill 35 transfers employees from Ontario Hydro to its successors. It's a very powerful, broad discretionary power that exists despite any general or specific act or rule of law. The society believes there should be a requirement to consult with employee representatives before transfer orders affecting those people, to make the transition smooth and to achieve the lowest costs. We recommend that Bill 35 be amended to require consultation with the bargaining representatives before making transfer orders affecting employees of Ontario Hydro.

The last thing I'd like to look at is the Ontario Hydro pension plan and its successor plans. We met with Ministry of Finance representatives so we could understand Bill 35, and we reviewed the legislation in light of these discussions.

We'd like to focus our discussion. Basically we have three principles that we have used to help us arrive at some results. The first principle is that we would like to have the bill provide a level playing field for all the employers and employees in Ontario, to ensure that pension plans under the Energy Competition Act are consistent with pension plans under the Pension Benefits Act, and to ensure that Ontario Hydro's successor company employees are not disadvantaged with respect to other employees in Ontario.

Second, we would like to ensure that the successor companies are not competitively disadvantaged relative to other companies and that they're permitted to negotiate mutually beneficial agreements with their employee representatives in the same manner as those other companies.

Third, we would like to treat all the stakeholders in the pension plan fairly and equitably and protect the interests of the ratepayers during Hydro's transition to those successor companies.

1550

We use those three principles to have a look at how plans are governed, how surplus is used, reciprocal access between plans, participation in plans and how broad in should be.

First, governance: We don't believe Bill 35 should mandate a governance structure which prohibits joint trusteeship of plans because this disadvantages the employees and the employer. Specifically, it should be possible to negotiate joint trusteeship etc. We believe that Bill 35 should be amended to permit the Financial Corp, Ontario Hydro's successor, or its immediate and future successors to enter into agreements with the bargaining agents to provide for joint management of the plans, to share the entitlements of surplus and the liability of deficits, to resolve any disputes with methods other than moving before the courts and to negotiate with the employer and the bargaining agent regarding changes in benefits or rate of contribution of the pension fund.

Second, in addition to governance, looking at surplus, as a result of contributions by both Ontario Hydro and its employees, the Ontario Hydro pension plan has a substantial surplus today. The society recognizes the reasoning behind Bill 35 permitting contribution holidays to employers. If these holidays are used to reduce operating costs, this will benefit the ratepayers of the province.

We believe employee contribution holidays can also be used to benefit ratepayers. We believe that the legislation should encourage employee contribution holidays and the reinvestment of moneys that employees contribute to the pension plan for uses that advance the interests of the employees and the public and ratepayers. Such uses could include provisions permitting an employee contribution holiday with a requirement that employees contribute towards labour venture capital funds etc to allow that investment to go into the electrical industry in Ontario. This is the kind of thing that can be done without requiring changes to the Pension Benefits Act or the Income Tax Act. That would be our recommendation on use of surplus.

We also believe that there needs to be reciprocity between the pension plans so that employees are not trapped and labour mobility is not reduced in moving about the province so that you can get skilled labour to employers that need that labour. We would recommend that a standard form reciprocal agreement be entered into by the successors of Hydro that allows employees to move between the plans.

Lastly, levelling the playing field, we don't believe that the bill should be inconsistent with the Pension Benefits Act. We believe that the legislation should not preclude multi-employer plans etc. Whatever can be negotiated under the Pension Benefits Act between employers and employees should be allowed under Bill 35.

Those are the general concepts of the society's recommendations. I would like to thank you for providing us

with this opportunity. I will try to answer your questions. If I'm not able to, I will obtain the answers for you.

The Chair: Thank you. You have left us three minutes for each caucus. We begin with the NDP caucus.

Mr Lessard: Thank you very much for what is a very detailed and extensive brief. I wanted to tell you how much I share your concerns about foreign ownership and control of power-producing assets here in Ontario. I think that's probably the direction the government is heading towards, the privatization of Ontario Hydro, and that's something I am concerned about. I appreciate your suggestion to try and put things into the legislation to prevent that from happening, but just because we put things in the legislation, it doesn't make them so, and that's especially true with respect to the stranded debt.

You've suggested that the amount of the stranded debt should be such that it places Genco and Servco on sound financial footing. I don't know if that provides us with much more clarification than we have now, because just by saying it's so doesn't mean that's what is going to happen. It's really the market that will determine whether the amount that's picked for the stranded debt is right or it isn't. I wonder whether the reason you're suggesting that go in the legislation is because you have some concern that the Minister of Finance may come up with the wrong number. If that's the case, do you have some suggestions as to how we might arrive at the right number for the stranded debt so that there is a sound financial footing for Genco and Servco?

Mr Wilson: I don't have suggestions on how to arrive at the right number, but there are many people lobbying that all or most of the debt be left with Servco and Genco and that the province wait and see what happens, to see how they fare in the market. What we would like to happen is that the playing field be levelled and that Servco and Genco have the same debt-equity ratio and the same kind of resiliency that their competitors have, and that that be done initially so that when the fight takes place for market share, Ontario fares as well as it can fare and that the province doesn't end up digging itself out of a hole and not being able to pay off its debt and that market share goes to foreign competition and out-of-province competition.

We're saying that it's important that we not look at, as others have suggested, allowing the debt to be left mainly with Servco and Genco. These are people who are looking mainly at, as I said, the Ontario market and not the bigger global market. We can talk with you about how to do that, but we believe it would be a good thing to provide that kind of direction to the minister in the bill so that the minister can get input from us and from other people as to what a sound financial footing is and will not be dealing with people who are requesting that the two major successor companies carry a larger burden of the debt and wait and see what happens.

Mrs Johns: Thank you very much for joining us today. You've certainly given us a very important perspective with respect to the whole hearings and so I wanted to just talk about that for a second. I guess in most cases if we

have heard any comment on the specific issue of market power within the bill, we've heard some concerns that Hydro may be getting too much market power. From that situation we haven't had anyone talk as much about how important it is to compete in the northeast corner of North America, as opposed to just in Ontario. From that standpoint, since you're really the only person who has raised this issue, I want to give you more of an opportunity to talk about that, because that's important for us to understand. As legislators, we're on a difficult balance. Do we keep the market power right for Ontario or for North America? If you could talk to that issue for a few minutes, I would appreciate it.

Mr Wilson: I think you've pointed to the answer, and that is, what is the market? What does Ontario expect to do and where does it expect to compete? I would say that the market begins in northeastern North America and then it moves across North America and it probably moves outside of North America. If we're to look about us in Toronto and look at the people who are building offices here, who expect to come here and who expect to complete, and we can name them — American Electric Power, British Energy etc — we know that the competition knows where the market is. If Ontario is opening up its borders, and that is what it's doing, and it's increasing the interties between Ontario and the United States and Quebec, then we have a choice as to which way the electricity flows: either the product comes in and the jobs go out or the electricity goes out and the jobs come in. What happens inside Ontario definitely has to be considered, but the make-it-or-break-it for the province will be, when we run up against the big American juggernauts of Duke Energy and American Electric Power and Enron, whether we win or whether we lose.

I would say that the critical thing for Ontario is to look at the big market and that's why we made the recommendation that when you look at market power, look big and make sure that you're not just advantaging this province against the major competitors that we'll face.

Mrs Johns: For the society of Ontario Hydro professionals, which is a professional union or a professional group of people, do you believe that jobs will be created as a result of this bill and investments will come in? Do you have any indication about where you think pricing will go as a result of this?

1600

Mr Wilson: I don't know where pricing will go, but I can tell you about what will happen if the electricity goes out. The Institute for Policy Analysis at the University of Toronto did a study about what would happen to the province's economy if 20% of the electricity came into Ontario as an import. It means that jobs will be lost. It means that government deficits will rise. It means that total output across all sectors of the province will fall. So if it doesn't happen that we either hold or gain market share, the people who I represent will have a big problem and Ontario will have a big problem, which is why I say our interests are aligned. I would hope they're aligned for everybody in the province, all of the utilities.

Mrs Johns: And Bill 35 will give you some of this ability to move forward and to capture those markets, with some small changes that you've recommended?

Mr Wilson: Right. We think the provisions should be strengthened in terms of allowing the successor companies to rehab those reactors and not to be forced to enter into leasing and swapping agreements, to allow it to compete head-to-head on the same footing with the same tools that its competitors will have.

Mr Phillips: I appreciate the presentation. Unfortunately, there's so much here and so little time. In the last part of your presentation, the transition issues are absolutely crucial to your members, obviously, and I wish there were more time to debate them. I hope they can be accommodated in some form or other.

I want to just follow up on one of the fundamental issues of this bill and that is your support of Ontario Hydro retaining essentially 100% of the generating capacity. I'm just curious about that, in that I do understand that the purpose of the bill is to see a lot more generating capacity come on stream in Ontario. There are a lot of investors right now waiting for the bill to pass so they can build generating plants, new technology and new generating plants that will be, I gather, extremely efficient and will take substantial share away from the existing generating plants. In fact, the minister said the other day that it's his expectation that — right now Hydro has 90%; that will drop to 60% in these generating plants.

I do understand the need to have at least one major player here in Ontario that can compete with the northeast, but whether it is in Ontario Hydro's best interest to retain 100% of those plants is, in my mind at least, an open question. Are they the right ones to own? Would some of them be better off in other hands than Ontario Hydro? If you're going to be this northeast North American giant, have you got the right mix here? Because once this bill passes, that will be your generating capacity. Are you saddling the future of Ontario Hydro with the wrong generating capacity?

Believe me, the day the bill passes, the value of these generating plants drops. As soon as the bill's passed, in my opinion, the value begins to drop because other ones are going to build new generating capacity and you'll be competing for a smaller market. I'm just curious about the professional advice you would give us of whether now Ontario Hydro, an operating, competing company, Genco — if you were a shareholder in Genco, which I guess we all will be, is this the right package of generating plants that you want to compete down the road?

Mr Wilson: I guess the answer to that question is how it should be done. Should everyone have the same rules? Should Duke Energy have the people in North Carolina taking it apart or removing part of it? Should Ontario Hydro be forced to lease or forced to get into a swap? What we're asking for is that Ontario Hydro be allowed to play by the same rules that other people play by. Actually, I should not say Ontario Hydro, forget Ontario Hydro, but Genco; you said it correctly. Should Genco, our big

player, be allowed to play by the same rules that Duke Energy plays by?

Several things: Number one, what will happen to Ontario Hydro's generating assets when the bill passes? There are a large number of people with a lot of money in Ontario right now who are trying to buy bits and pieces of Ontario Hydro, some very large bits and pieces. I think the market will determine what Ontario Hydro's generating assets are worth. With Ontario Hydro's rehab of its reactors successfully, they will be worth more than anybody else in terms of that next kilowatt of electricity in this part of the continent. Those are what the studies have looked at.

Ontario Hydro is in a good spot, so what we're asking for is, allow Genco to play the game, allow Servco to play the game, and don't saddle those people with rules and regulations that will hurt Ontario when they have to come head-to-head with Duke Energy. I'm sure Duke Energy is wondering if they have the right mix of this or that, and if they don't, they'll make those corrections. All we're saying initially is, allow the successor companies to get in there and play the game and don't, in terms of market power inside the province, cut out this amount of generation or that amount. Let the utility deal in a competitive fashion with its competitors.

The Chair: I'm sorry, time has expired. I apologize, but we must move on. Thank you very much for coming before the committee today.

GREENEST CITY

The Chair: Now calling representatives from Greenest City. Good afternoon and welcome.

Ms Shirley Roburn: My name is Shirley Roburn and this is Scott Moore. Originally, David Kraft was scheduled to speak but he wasn't able to make it, so we will.

Chernobyl happened at the end of April. My friends in Poland and the Ukraine and Romania were 10 to 13 years old at the time. When I worked in Europe, sometimes slips of their memory would come out from those days. They would talk about their fear of eating vegetables that grew too close to the earth or the secretive distribution of iodine pills that was deployed days too late to have much effect. But the story that I remember most was the story that my friend Suzanna told me.

Chernobyl happened at the end of April, which is right before the May Day holiday. May Day is a workers' holiday and in the Soviet Union and Eastern Bloc states it was a very important time for public display. The people would go on parades. The children would march first, with banners and music, and they would be followed by the workers, while the party officials sat and watched from the balconies.

In 1986, during the crumbling years of the Soviet Union, the May Day parades went ahead as usual and I will always remember Suzanna telling me about this eerie event on the first real day of spring: the children in their uniforms and shorts waving red flags, playing trombones

and brassy instruments as their thin feet kicked up radioactive dust.

I know that seems like a strange place to begin a discussion about energy policy, but I think it's important to remember that energy policy is about more than just consumer protection. Energy policy is very important. While we take it for granted in our everyday life — everybody uses and depends upon energy — it's important for our safety and security, for our health and quality of life and for the stewardship of our land and resources for future generations. At Greenest City we're deeply concerned about all of this.

I'd like to begin by thanking you for taking the time to hear our voices. Scott and I will be speaking on behalf of Greenest City. I work at Greenest City and I'm also a student. Scott is a business person, who also coordinates our No Energy to Waste program, which is a program whereby retailers work to increase their energy efficiency and reduce their energy costs.

Greenest City works on the community level to help people reduce greenhouse gas emissions. I think what we can bring to this committee is a discussion of how energy policy affects us on a community level, so I'm going to begin by discussing some of the issues that I think affect regular people living in Toronto and the surrounding area because of our energy use, and Scott will go on to address specific measures that could be in place in the bill to protect people as consumers and as citizens.

Thankfully, there have been no Chernobyls here. Partially, maybe this is due a bit to luck, but it's also due to the fact that we have had regulations that protect us. With the recent incidences of smog in Toronto, it's really brought home to me how important strong regulation is. If somebody had told me 10 years ago that I would wear a gas mask to bike through my city or that I'd be afraid to go outside in the hottest part of the day or that swimming in the lake next to where I live would make me sick, I would have had a hard time believing it. I don't want to be extremist, but I find it weird that we have accepted a lot of these things as totally normal. For me, whenever I bike through the city in a gas mask, it creates a science fiction quality to my life.

1610

The radio announces that there's going to be hot, sunny weather and that will bring smog today. It's declared as if this were a normal consequence, as if a bright, sunny day in the Sahara Desert would equally bring smog. But it's not. It's a clear result of our policy choices. It's because the restructuring of energy policy in the United States has led to more burning of dirty coal. It's because we have six million car trips in southern Ontario and have had difficulty putting in place better regulations to govern their emissions. It's also because Ontario Hydro's own plans predicted that from 1996 to 1998 there'd be a 70% increase in fossil fuel emissions. In the absence of effective regulation, many people have suffered.

In France, when there are smog days, half the cars are taken off the road and other measures are put in place to reduce energy use. But the values driving us are different

here. On smog days, we don't see people walk, cycle or take transit. People turn on their cars. They use air conditioners. For several days each summer, because it's inconceivable to us to limit the freedom of the car, we limit the freedom of our citizens. Children, the elderly and people with respiratory ailments are told not to go outside, to be under house arrest or risk possible death or severe respiratory damage. How did this become acceptable to us? What could be more basic than our right to breath?

I find our inability to deal with smog disturbing on two levels. One is just because I am a lover of beauty. On an aesthetic level, it's sad to me that the sweetest days of summer have now become a soup of dirty air and that for many children living in the urban area today, that's all they're going to know. However, it scares me even more because in an energy-intensive society I feel we're losing touch in a very basic way with an understanding of what is required for us to survive. We're witnessing a mentality where people really think that we can put suntan lotion on our children and that this will offer some kind of protection, while UV radiation damages crops, destroys the phytoplankton in the sea and the last salmon runs in BC die off in the warm, sickly water.

I'm very concerned that the absence of good regulation on smog and greenhouse gases will have really damaging effects on our future. Part of the work that I've been doing for Greenest City has been looking at sustainable farming. When I went to interview farmers, because I was interested I also asked them about the greenhouse effect.

I have one friend who is a farmer, named Jean Roussel, who works in the Mont-Saint-Grégoire area of Quebec, where he's been farming for 30 years. During the last ice storm, his family was without power for a month. He survived because people from Montreal came every day and drove cords of wood up and his family lived by a wood stove. So I asked him if he thought the greenhouse effect was happening, and he said: «Depuis quatre ou cinq ans, le soleil frappe avec plus de force. La terre, ça devient comme de la pierre, du ciment», which roughly means: "Yes, for the last four or five years, the sun has been striking with more force. The earth is turning to cement and to rock." I sat there with him and I looked out over his fields and I could see the worry he felt about how he was going to adapt to a changing climate.

It made me think about why we don't feel this worry. I think it's because in an energy-intensive society, we're not so close to those effects. Our food is trucked in from thousands of kilometres away. Many of us don't even know what the plants we're eating look like, what part of the plant a fruit or a root came from, let alone being aware of how we would need to act to grow our own gardens. I'm worried because I don't think we're truly aware of the consequences of what it might mean to live in a greenhouse. There isn't really any doubt among the leading scientists of the world that the greenhouse effect has started, that the world will warm up three to five degrees Celsius over the next 100 years. Already one in eight vascular plants is threatened. Already 95,000 lakes in northern Ontario will find the life in them extinguished if

present policies continue. Thinking about that and looking out over the crops, I wondered what the future would look like, how we felt we were going to be able to handle it.

I guess that brings me back to Chernobyl and the issue of regulation. Chernobyl was a different situation, but while it's terrifying, I can see very easily how it happened that people sent their children and the workers of their country out into a parade in radioactive dust. The leaders at that time were faced with the crumbling Communist infrastructure that they knew would have tremendous difficulty in changing. They felt a need to prop up some institutions that were at the core of their society. Maybe at some level they understood that letting the parade go ahead was dangerous, but I don't think they really believed that it could have harmful long-term effects.

I think it's time that we raise our own red mayday flag and really think again about energy policy, because there is a cloud on our horizon. It was unleashed some time ago. All we can possibly do now is minimize its consequences. But there's a wind stirring and there's not much time. When it does come, change will affect generations following after us and there won't be much we can do to take it back. We maybe don't have the structures in place that we need right now. People are expecting tradition to follow down the same roads we've always been following, but that cloud is dangerous. Maybe people don't know, but you're our leaders and you do.

I hope that when you look at this bill you will think not just of the need for cheap energy and of the needs of the people of Ontario as consumers, but that you'll also consider that life is precious and that the trust we put in you as our representatives is what's going to take us into the future. In that light, Scott is going to mention some recommendations that we think could be in the bill and go a long way to reducing greenhouse gases and dangerous environmental futures.

Mr Scott Moore: Greenest City as a group focuses on climate change and reducing climate change within the city of Toronto. We also like to do our small, community-level programs in very localized and ethnic areas. So the recommendations I have to the committee with regard to Bill 35 involve reducing air pollution, as well as helping to promote community awareness, energy reduction, energy efficiency and local energy generation.

With regard to means by which Bill 35 could actively reduce air pollution, we have three recommendations, much in line with other environmental organizations that have come forward and spoken at the same committee. The first would be emission caps which would be applied to the three major air pollutants — sulphur dioxides, nitrogen oxides and carbon dioxides — which are responsible for acid rain, ground-level ozone, smog and climate change.

I'll just reiterate some of the caps that have been put forth already: One is 43,750 tonnes for sulphur dioxide emissions from all electricity generated in Ontario as well as for all electricity generated for sale in Ontario; 6,000 tonnes for nitrogen oxide emissions, again from all electricity that's generated within Ontario and for all

electricity that's generated for sale in Ontario; and 23.3 million tonnes of carbon dioxide emissions, again applied to all electricity generated within Ontario and all electricity generated for sale in Ontario.

1620

We also believe that a percentage of all electricity generated for sale in Ontario should be generated by sustainable and renewable sources. By this we mean things like solar voltaics, wind generation and biomass generation. Those are the three major ones. This would have a double effect. It would help reduce the air pollution, but it would also help promote the green power industry and help it gain a foothold within the market here in Ontario.

Also, we believe there should be full disclosure of the sources of electricity on all consumer bills. This would give consumers the opportunity and the choice to purchase green power over "dirty power" in an open and free electricity market.

The reason we believe these things need to be written into Bill 35 is that we feel something has to be done immediately, before dangerous and irreversible precedents are set, before it becomes too late to try and roll back the clock against the large-scale generators out there that are polluting the environment.

The second area I would like to discuss in terms of our recommendations on Bill 35 is that of promoting community awareness, energy reduction, energy efficiency and local energy or electricity generation. I find it's often the case when there are large-scale provincial or federal regulations of this nature that they tend to focus on large-scale things like nuclear-powered generating plants and large coal generating plants, but often, as I'm beginning to learn, there are solutions in small-scale community initiatives.

The Greenest City sponsors and is actively involved in community-level programs that not only reduce greenhouse gas emissions but raise awareness around related environmental and health issues. We feel that Bill 35 has an opportunity to promote community awareness, energy reduction, energy efficiency and local energy generation. The principal means by which Bill 35 could accomplish this is through something called a systems benefit charge, which would be a small charge applied to the fee for the delivery of electricity that would amass itself into a fund which could then be allocated through grants and loans throughout the province, sponsoring programs designed to reduce energy use, to create energy efficiency where possible, to help small business and small energy producers get a foothold in the market, and in general raise community awareness, to help people make the bridge between things they do at their thermostat or with their light switches and the environmental damage that potentially can cause.

As an example, the Greenest City has a program, along with another group in the city, the backyard shade tree program. What that does is that we basically subsidize the planting of trees in people's backyards, front yards, multi-housing units etc. It's a very simple act that provides

people with aesthetic pleasure as well as a connection to the earth by planting a tree. When that tree grows up and reaches maturity, it can often shade a house and provide it with a windbreak during the winter. As a result, cooling and heating costs are reduced. It's a very simple act and it doesn't cost a lot of money, but the reward over the lifespan of the tree is great.

In a similar fashion, the program I'm closely associated with, the No Energy to Waste campaign, is generating energy efficiency in the retail sector by promoting energy-efficient lighting and more energy-efficient practices, as an introduction to the program and then, through that, reaching the consumer base of those businesses involved, those retailers involved, and promoting energy efficiency and atmosphere-friendly behaviour. Again, through energy reductions and energy efficiency, a lot can be done. I believe that a kilowatt that's not spent or not used is a kilowatt that doesn't need to be generated, which could save millions of dollars in terms of building power plants but also is a dollar for the environment.

Lastly, some of these monies could be provided to smaller or local generators of electricity, pioneers really, working with solar photovoltaics, wind generation, small-scale hydroelectric and biomass. Already here in Toronto there is something brewing on the horizon, the Toronto Renewable Energy Co-op, which is planning to build a wind generator here in the city, and it is selling off shares as a co-operative. With the opening up of the market, I think there is a real chance for smaller-scale people to penetrate into that market, especially if there is full disclosure on the bills and especially if consumers are allowed to make the choice. As someone who is a part of the fledgling green economy here in Toronto, I firmly believe that given the awareness and the choice, the consumer will make the decision that's best for the environment.

There's a real future here in this area of expertise and technology. We should not let the opportunity pass us by here in Canada. A great example of that is telecommunications now being sold overseas in places like India for millions and millions of dollars, providing thousands of jobs here in Canada as well as millions of dollars in taxes.

I guess basically to sum up, we hope that the committee will see fit to write into Bill 35 some measures which will hopefully reduce air pollutants, not just in Toronto but throughout Ontario and for our neighbours who will be affected by it as well, to the south, east and west, and also give businesses and small-scale community organizations the chance to grow and develop within the larger umbrella of a deregulated electricity market.

Unless you have anything to add, Shirley —

Ms Roburn: No. We wanted to leave some time for questions.

Mr Moore: Thank you very much.

The Chair: Colleagues, our time for questioning is very brief. I think there's time for one question and answer for each caucus.

Mr Galt: Thank you for a very effective and thoughtful presentation. I too am concerned about the environment, particularly when I have a daughter with asthma who happens to live in Toronto, so it rings home very, very close.

I'm not familiar with your organization, Greenest City. How long have you been active and involved with the environmental movement?

Mr Moore: We have been in existence for about three years. We came about after the demise of the green communities program under the former provincial NDP government. The east Toronto green community, the north Toronto green community and the west Toronto green community got together and applied for funding from the Toronto Atmospheric Fund. Currently we get funding from TAF, Action 21 and a whole host of others.

1630

Mr Galt: There'll be extensive consultation. We'd very much like you people to be part of those discussions. If you'll leave me your card before you leave, the ministry will get in touch with you for the consultations on the development of regulations. All the concerns you've expressed will be considered in those regulations.

Mr Phillips: There are two approaches to this. One is that money is raised and then available to organizations like yours. There's a school of thought that says it's very difficult for governments to pick the right ones. The other approach is to find a way that successful projects are encouraged through regulations or through legislation. In other words, rather than fund projects, a climate is created where successful ones are able to operate. I interpreted from your recommendation that you were suggesting we try and make funds available as opposed to the other way. Have you considered the other approach? If you have, do you have any suggestions for us there?

Mr Moore: Any time you've got a large number of community groups and a small number of dollars, it's almost an open market in itself and there's a lot of competition to win those dollars. In general, you find that the programs with the best ideas and the most developed plans of action are the ones that initially win the funding and those that are successful and have a future continue to win the funding. That's why we need large accumulations of capital that can then be allocated, just the interest alone, to groups within Ontario to help us to keep doing the work we do. With Bill 35 there's an excellent opportunity to instill that in the framework by taking a small tax, a surcharge, from people's bill and taking that money and allocating it in that manner. Hopefully, that answers your question.

Mr Lessard: I'm pleased to see that there seems to be such a strong consensus of opinion on environmental initiatives that should be placed in Bill 35 with respect to emission caps, the required percentage of energy generated by renewable or sustainable sources and also the sustainable development funding technique as well. The other area you mentioned that I'm not so clear on is conservation measures. I'm wondering whether you think that the approach with respect to conservation should be

based on financial incentives, or should it be based on price? The bill really encourages increased sales for people who generate power in Ontario. It doesn't really encourage conservation, especially if the price goes down, as the government says; that would encourage consumption.

Mr Moore: That's the whole dichotomy in itself. You're opening up the market in the hopes that the price will drop. You would expect that when the price drops, demand will increase, just by nature of people being flippant or what have you.

Probably most of the major energy efficiency initiatives that were launched in North America arose out of the energy crisis in the 1970s. People drove less, people purchased energy-efficient lighting etc. My mother is a classic example who refused to turn the heat up above 68 in the house and who issued stern warnings every time lights weren't turned off.

The principal way by which you're going to reach people and teach them about reduction and reducing their energy use is by forcing them, through awareness, to consider the implications; in other words, to make a bridge between using lots of electricity and causing acid rain, which will kill 95,000 lakes in the years to come; or connecting turning their air conditioning up on a really hot day to the fact that the coal plant here in the city has to increase its capacity, which causes more smog, which makes it hotter.

If there is an opportunity and a way that Bill 35 can promote awareness of that nature, then I really believe, in an open market where prices will drop, that's one of the few ways you can reduce use.

Ms Roburn: May I just add something?

The Chair: Very briefly; our time is over.

Ms Roburn: One thing is to consider a lot of the externalized costs. Part of the point is that coal has some very expensive consequences, which include \$5.6 billion in health care costs over the long term. As far as regulation goes, in the long term a goal would be to change the taxation system and to allocate the true costs of different energies to their production. But unfortunately, I don't have enough knowledge to comment on that in great detail.

The Chair: Thank you for coming before the committee today and sharing your knowledge that you have gleaned in your experiences. We appreciate you taking the time to do so.

BENNETT, JONES, VERCHERE

The Chair: Our final presenter this afternoon is Mr Budd, from Bennett, Jones, Verchere. Good afternoon and welcome.

Mr Peter Budd: Thank you, and it's nice to see you again, Ms Elliott.

The Chair: And you as well. I'm sure you know the routine: 30 minutes for presentation time and we hope you'll leave time for questions. If you want to introduce yourself formally, that would be appreciated.

Mr Budd: For the record, my name is Peter Brian Budd. I'm a partner at the law firm of Bennett, Jones, Verchere. Thank you very much for having us here today. It's a real opportunity for a practising lawyer to appear before a committee such as this and to offer comments to you on Bill 35. I recognize of course that it's very late in the day and in fact in the week. Last may well be least, but I'll do my best to be brief.

I have been engaged in the practice of law for some 10 years as a specialist in the energy area, from a policy, regulatory and commercial perspective. I was fortunate to have articulated at the Ontario Energy Board so I have some intimate understanding of how it works. I have also worked at TransCanada Pipelines and therefore I have been active in the natural gas deregulation process for some 12 years. I'm a sitting member of the Market Design Committee.

Just a brief blurb on our firm. We are an energy law firm consisting of some 200 lawyers across Canada. We specialize in all aspects of Canadian and international energy projects. We act for a variety of energy clients: gas and electric utilities; agents, brokers and marketers — you've probably heard the term ABMs here — who will be active in the electricity market; as well as gas producers, pipelines, generators, you name it. If they pay the bill, we'll act for them.

We've recently even been assisting the Alberta government on their new energy legislation there. We've been active in the Hibernia and Sable Island development. So we have some significant interest in Canada in seeing our energy laws work well, and we're grateful for the efforts the Legislature has put forward on this one.

That has taught us, then — we've learned a number of valuable lessons from the natural gas deregulation process across the entire country. We've been active in British Columbia, Alberta, Manitoba, Ontario and Quebec and seen how that's unfolding.

In Ontario, you may recall that former Ontario Minister of Energy Vince Kerrio embraced that deregulation and competitive process in order to bring those substantial benefits to Ontarians through competitively priced natural gas and related services. We've certainly seen that happen. It was the right move, with the right results. Gas prices fell substantially right after the regulations were taken off on pricing. While they've bounced back and forth, we certainly have a commodity market now in the natural gas field in which all customers can participate.

1640

We can't and we will not know all the answers at the outset of this electricity overhaul, but it is an understandable and acceptable result that we don't know them all right now. We didn't know them in gas either. Experience tells us that there will be plenty of opportunity later on, as we go step by step, to get it right and fix any of the unforeseen issues. That's natural; it's normal. If the industry is telling you it can live with the legislation, it's telling you that, that "We'll fix the problems as we go along."

There is certainly no case that I can see to delay or halt any kind of passage of this legislation. To the contrary:

We really do need to stay the course on this. From a practitioner's perspective, let me tell you that the draft legislation is an excellent starting point. When I first looked over the legislation, I felt relief that finally we were on the right track. Not only were we cleaning up all the problems of the past, but effectively we would be able to move forward and for some number of years, because the tools were there to do so. I believe the outcome will be very positive for all Ontarians, as our businesses and institutions become more efficient consumers in the energy industry. Therefore, the timing of the legislation is appropriate, particularly as we see electricity and natural gas converge.

There are some areas where the legislation could be enhanced to clarify competitive and commercial conditions, and I'll allude to a few in a moment, but let me make no mistake in being clear on this point: If this type of legislation had been in place many years ago, if there had been a regulator supervising the monopoly activities in the electricity industry — because of course we have had that with gas — at a minimum it's my submission that there probably wouldn't have been the Ontario Hydro debt problems we now face. That in itself, let me urge you, is a good and sufficient reason for us to engage in this expeditious overhaul of the industry. The public deserves accountability through an independent regulator, and the legislation allows for precisely that necessary oversight.

By now, the travelling committee, probably tired at the end of the week, has heard about the myriad benefits embedded in the legislation. As I say, I was very excited to read this because we're really moving forward. You've got:

Competition driving market-based pricing, and that's going to deliver the right result. Count on it

New customer choices in the retail and the wholesale markets, which will open simultaneously. Let me say there's no other jurisdiction in the world that's had the courage, the stamina and the foresight to open both of those markets at the same time, I am advised.

Licensing protection. We'll get that right; we've learned that from the natural gas world.

New flexibility, which is tremendous for the board in setting market rates.

Dispute resolution techniques.

A provincially organized and operated grid. That is of course referring to the independent market operator that the MDC recommended, and of course it's in the legislation.

And controls on abuse of market power.

I could go on, but it's just so comprehensive. It's absolutely the right recipe. It's modern legislation which is certainly designed to remain flexible and work for years into the future, and I really look forward to seeing the underlying regulations as they are promulgated.

But the committee has also heard concerns, some of which are legitimate. Yesterday in Sudbury I heard some of the concerns such as: "We don't know the outcome, or until we do let's not move ahead, let's study it longer."

With respect to those views, as a practitioner I don't think we have that luxury.

The experience on the gas side is that the benefits of a competitive commodity market and related services market will not be concentrated solely to the benefit of certain types of customers, like the larger ones. You may have heard that argument. Rest assured, from those of us who waded through the experience on the gas side, that didn't happen. All customers will ultimately benefit from open market forces driving down commodity prices and services to what we call in the industry their lowest practical cost. That will happen. The proof, in my submission, is that there's going to be, right off the bat, hopefully, an active spot market which is accessible to customers directly or indirectly through suppliers and/or through their municipal electric utilities' power portfolio. Under the regime proposed by the legislation and supervised by the Ontario Energy Board, the IMO, the government and all customers will have the opportunity to benefit from the market-based prices.

I'd like to turn to the Ontario Energy Board as regulator. You know well, and it's my view, having reviewed the legislation, that it confers enhanced jurisdiction on the board to ensure that the public interest in Ontario's energy markets is not only preserved and enhanced but substantially improved in the way that the board has handled the natural gas regulation of monopoly activities in the past. The legislation has given the board additional tools to protect the public, with such things as licences and remedies, investigations, inspections, approvals — new tools which were not there even before.

Another strong feature of the legislation — I think this is a really positive one — is the express ability in the wording of the act for the Ministry of Energy, Science and Technology to send matters to the board for their review and effectively to dialogue with the board in an appropriate legal way at any time. That's important, because that's a fundamental thing in law that we haven't really put into words before, that it is appropriate that a board take policy guidance from the government. That's there now in explicit and fair terms.

I want to just jump on to gas in a more detailed way. Some of us who have been very active in the industry have forever, since we've started working, been trying to get the burner tip sales issue resolved. I don't know if you know what that is, but effectively the previous legislation under which the marketplace in the gas world has been operating didn't allow for buyers and sellers, industrial customers, to trade volumes and deal with one another. It precluded it. You had to take an artificial transaction and bounce it off a meter point on to the TransCanada Pipelines system — and you had to pay for that — to get around that problem. This legislation removes that problem. I think you're going to have a lot of happy customers and agents, brokers and marketers because they'll be able to transact in Ontario. I think you heard yesterday the made-in-Ontario price arrangement. That's what you've done with the gas legislation. May I say as a practitioner, you should all be commended in moving that forward.

On the gas storage issue: This is one that I think maybe we could tweak a little bit to help that industry along. I assure you, my experience is that energy sources are converging, and it will be important to recognize this through making the market more customer- and supplier-friendly. It's easy to do. For example, suppliers will increasingly be selling more than one energy type. Customers using gas to make electricity and steam may purposely interrupt their own gas — they've got their contractual arrangements arranged that way — and burn oil or propane when the gas market prices are high. So they can sell their own volume, say, into the market. The result is, when you've got all sorts of industry players able to do this, in Ontario we're going to have a much more efficient energy industry. That's very much to the benefit of customers. This legislation supports that.

One possible enhancement in the legislation I'll leave for your consideration — on the weekend, of course. That's that it might be helpful to have an explicit recognition that the gas storage services become more unregulated so that it becomes a more competitively priced service offering. Currently, to offer a storage service you have to go to the board even for the pricing. To me, that doesn't seem necessary and reasonable. I urge you to go back and think about that. It'll certainly allow other storage development to occur in the province. It'll stimulate that kind of development. There are a lot of small pools out there that would benefit from having development, but if they can't go into the market and set their own costs in a flexible way, they're not necessarily able to recover the necessary funding from the market to be able to do that. It's another example of letting that market work.

On the issue of diversification and utility sharing of services, I would note that Bill 35 seems to limit the activities in which MEUs may engage, unlike the natural gas corporate affiliates. I think that restriction might be clarified — you could even just do it through regulation — so that MEUs understand what activities their affiliates may engage in and to what extent they should be allowed to enter into other types of energy sales and services businesses. It's not a difficult point, but just one that might be helpful to them.

1650

To the extent that regulatory control over the sharing of services between utilities and their affiliates is necessary, and I think it is, the Ontario Energy Board should have the jurisdiction through this legislation to control those relationships through the licensing regime and also through conditions and terms on board orders. The legislation allows for that, which I think is a good thing. I also believe there's provision for some form of code of conduct in this area.

Stranded debt: Just briefly, this is an issue which I think is among the two top issues we've got to get right. I know there's a lot going on on that front, but on the legislation itself, the legislation does allow for a collection methodology and flexibility of setting and resetting the level of debt collection, the terms, the payers and that type

of thing. In my respectful view, based on some fundamental regulatory principles of cost causation — the Bonbright book is one of them you might want to look at behind the scenes, and there are many others. There is a fundamental principle in cost causation that those who cause the cost should pay and those who don't shouldn't. I know you heard lots yesterday, in fact I think I was there when you had all three exceptions in a row come before you, but it's a fundamental regulatory principle and you may want to look at it.

On the market power abuse and mitigation matter, I put this as another of the top issues in the electricity world which must be addressed in order to ensure that a competitive market develops in electricity. I'm satisfied that the legislation takes a very good start at this point. I would note that while it seems to take a stab at controlling the abuse of market power, if the abuse occurs, with a minor amendment to the wording of the act, which we'll be happy to provide to the committee if you'd like, the regulatory body, like the OEB, would be able to act in advance of there being an abuse problem or a potential abuse problem. Therefore, we think there should be some minor amendment put forward in terms of handling mitigation measures, because that's not clear in the current wording — just a suggestion for you.

On the environment, I was pleased to see that the legislation addresses that circumstance wisely. It puts it right up front, in the objectives section, for gas and for electricity. That's a very effective way to do it, because it's referring to the ongoing policies of the Ontario government in this area. Certainly, these policies are going to change. In my experience, the Ontario Energy Board has dealt with these issues through demand-side management and welcomes environmental groups in hearings before it who have an interest. I think the legislation allows for that to continue and it will be enhanced.

Finally, if I could turn to first nations, some of you may know that our firm is acting for a major first nations group which intends to connect to the Ontario Hydro grid in three remote communities. They are called Five Nations Energy Inc. They are putting this project together along the western shore of James Bay. Because we have some direct experience in this area, and I heard some comments yesterday, I thought I might help with this point.

Presentations and representations were made yesterday concerning some possible deficiencies in the bill respecting opportunities for first nations to benefit from the new regime. I've had a chance to speak with some of my partners about that to get their views. Our view is that the act should work very well for them as well. In our view, to the extent that certain of the northern first nations are already connected to the grid — for example, around Moosonee, Moose Cree — they stand to benefit just as much as everybody else, because they are rural retail customers as they stand now.

To the extent that you have these remote communities that are, as Mr Gilchrist said yesterday, on diesel generation — they are not connected to the grid — in my view they are a special circumstance. I believe the white paper

referred to their continuity of treatment. The board will undoubtedly have to look at that in the deregulated market. In some form, the subsidy from what we call up there the standard A rates that the institutions pay will have to be considered and continued in Servco's first rate application, as long as they remain Ontario Hydro Servco customers. That's likely, so that what we call in the regulatory world "rate shock" is avoided. I expect that will be a normal type of treatment. We see no problem on that one.

To the extent that the bill does not stand in the way of connections by these remote communities to the grid — in other words, they are finally tied in — one submission for you is that the committee should ensure that the regulations which will be promulgated promote, rather than discourage, connections to the grid where from an economic, long-term perspective such connections make sense. So this is in the world of what we call system expansions that the energy board may have to deal with.

In any event, what we hope does not happen is that these types of connections are discouraged because in effect the remotes are difficult communities. For those who have been up there when the power goes out at minus 10 it can be quite an experience, and that's in October.

We are hopeful that the board will have due regard for all the special circumstances regarding these particular types of remote connections, and in this way the OEB would receive some positive government policy guidance that it can point to or rely upon when it's making its decisions and otherwise not disincant — which isn't a word, by the way, in spell-check — otherwise appropriate system expansions.

Thank you very much for the opportunity to appear — I hope I've come under my limit — and for your patience in being here so late in the week.

The Chair: Thank you very much. Yes, it is late in the week, but these presentations are interesting to all of us, yours as well as the ones we heard at the beginning of the week.

We have time for questions from each of the caucuses, a brief question and answer though, just under three minutes. We'll begin with the Liberal caucus.

Mr Phillips: Obviously you know this stuff well. With the limited time, I want to start on the stranded debt. Just trying to — I hope I get a chance for two questions — understand your recommendation here, are you suggesting that since Ontario Hydro really was the cause of the stranded debt Genco and Servco should be assuming a significant portion of the stranded debt?

Mr Budd: I'd like to say a couple of things, if I can, Mr Phillips, on that. First of all, I understand that finance is looking at that closely. It's in their bailiwick to actually determine the amount. To the extent that the cost causation principles are followed, and I recommend that they are, then I submit that's probably where the majority of the debt ought to lie. But we have to bear in mind the definition of stranded debt, which is, as I recall it, that debt which cannot be recovered by those entities in a competitive market, and trust the finance department to

come up with the advice that they get and to provide that to us.

In terms of the methodology for collecting it — and I'm not speaking as an MDC member here, I want to be clear on that — it's my view that that is a matter which ought to be left to those who are in the business of setting rates and designing the marketplace. It's a very difficult issue as to how it's collected, but one concern I have is that it be collected from people as a fixed fee which is transparent, that people can understand it or see it and have it explained to them and not be buried, and not be a cents-per-kilowatt-hour charge. I don't think that's appropriate. As a person interested in rates, my preference that it be a fixed fee on a monthly basis for the customers, whoever is going to pay it.

Mr Phillips: One of the things I find in this whole process is that the major interests have got their voices heard. It's the consumer I'm continually worrying about. Are you acting for one of the companies that are coming forward to propose a generation plant as well?

Mr Budd: A generation plant?

Mr Phillips: Yes.

Mr Budd: I am involved in the TransAlta file in some capacity.

Mr Phillips: Because the more debt we load on to Hydro, the less competitive — one of my concerns is that the taxpayer in the end has a huge asset here that they are responsible for and if we make Genco uncompetitive, or at least less competitive, then that asset value drops substantially. My concern with your recommendation here is that those who caused the debt pick up the debt. Some of those decisions were made in the past, and as we look forward to trying to have a competitive Genco, if we load in too much — your plan will do it very well, but Genco is going to have a problem, I think.

1700

Mr Budd: Yes. I'm not speaking here on behalf of TransAlta; I want to be clear on that. The principle I'm putting forward is just a fundamental rate-making principle. We need to be cautious about how we are collecting it. Certainly if all of that debt were loaded on Genco, which I do not recommend, the entity would likely become commercially unviable, and that's not in the interests of the citizens of the province.

Mr Lessard: Mr Phillips kind of took my question away because that was really the focus of my interest as well, that those who caused the costs should pay. I'm thinking, is that Ontario Hydro? Ontario Hydro can only pass that on to consumers. Or is it the government that permitted Ontario Hydro to get into that position in the first place? The government can only get that from taxpayers. I think of that Pogo cartoon: "I have seen the enemy and it is us." One way or the other, somebody's going to end up paying the bill and it's going to be either consumers or taxpayers. My concern is that it's not residential consumers who pay an inordinate share of that stranded debt.

Mr Budd: I understand that.

Mr Lessard: I guess by saying what you have, you suggest that there should be exemptions. Some groups or

some organizations or sectors shouldn't have to pay, they should be exempt. I don't want to see a situation where that list of exemptions gets bigger and bigger and the people who have no choice end up with a bigger part of the bill.

Mr Budd: If I can respond to that, I think you probably heard your list of exemptions, practically, yesterday and you're not going to hear a very large list. I say that because the number of those privately owned utilities in the province is small. You do not have a significant problem on that, in my view, and I'm sure your staff can help you with understanding that.

But I would liken it to this — and I'm not here to speak on their behalf. As a regulatory lawyer, I would say that their investors and their shareholders, ratepayers, have had their own stakeholder arrangements which have, to a large part, I gather more or less, depending on which one you're talking about, been stand-alone. They haven't necessarily been a part of that problem or, to whatever extent they have been, they're prepared to admit that. Where they haven't mean, that means they've managed their investments well. They've paid for those investments and they've paid for them presumably along the way.

Unfortunately, Hydro's rates, if you look back at some of the early OEB recommendations in their reports — bear in mind they're not decisions, they're just recommendations to government — Hydro's rates probably should have been higher for some time, some time ago. That's why you've got the stranded debt. You had a lot of expenses being incurred which weren't being charged through and therefore you have what we call in the regulatory world an intergenerational problem. Now a lot of people have gone who incurred the use of that power and didn't pay the full cost of it, and that's of course how we get there.

It's a difficult challenge at the best of times, but one thing is sure: The parties that were not using those facilities at all weren't involved in that. I suppose if there's one place government could go ahead and say, "We're going to spread out the costs," it is at the government level. It's a social policy decision, but it wouldn't be, in my submission, necessarily an appropriate regulatory position to take.

Mr Gilchrist: Thank you, Mr Budd. Good to see you again. Given your range of expertise in both electricity and gas, I think perhaps you're in a unique position to give us some guidance because we certainly have not heard much on the subject of consumer protection from energy marketers. I guess my first question would be, what should the consumer protection requirements be for the marketer licences for gas and electricity? Should they be the same or should they be different?

Mr Budd: I think that, generally speaking, they can be the same, very similar for gas and electricity. I don't see that at the small or what we call low-volume residential level there needs to be any difference. If somebody can point one out to me, I'd be happy to consider it. What you're dealing with is the potential for customers at the low-volume, small residential level to be vulnerable

because they lack information and may be uninformed. I think they will get up to speed. I've seen it start to happen in the gas business and I believe it will happen in the electricity business. It will be necessary to put proper notice out in customers' bills and to bring customers along, and I see some municipal electric utilities, like in the Orangeville area, doing that already.

Mr Gilchrist: You've been involved in setting market rules. I'd be interested in knowing — we've heard some parties advocating that there should be price caps put right in the legislation. Do you have any comments on that?

Mr Budd: Yes, I have a view on that. I would vigorously urge you not to do that.

Mr Gilchrist: Why do you say that?

Mr Budd: That is because in order for the commodity market to find an equilibrium, you have to let there be spikes and valleys at different times of the day, seasonality and through the year. When you have that happen and with the remarkable number of market rules that we are creating at the MDC, you'll have a very viable signal in the commodity market sent out so that if there are difficulties with too much generation here or there, or a lot of consumption here but not enough transmission wires to get to that location, those pricing differences are going to start to show up.

If you cap those, if you put lids on them, floors on them or whatever you're talking about them like that, you're going to distort those signals and they will become very false signals very quickly and you will not be able to bring jobs and investment into the province in that way. You must let the commodity markets function as they will. They'll serve you well when the supply and demand get into equilibrium.

We probably have a small oversupply right now, so that's a good way to start out. When shortages start to be on the horizon, the Market Design Committee has written in its second-quarter report, public report, that there will be a regime in place to be able to identify that on the horizon and to deal with it early so we don't suffer the same problems that have occurred in Alberta.

The Chair: We thank you for coming before us. It's late in the afternoon for you as well, but I can assure you that we are very appreciative of your advice and of your expertise.

Mr Budd: Thank you, Ms Elliott, and good luck to you all.

The Chair: Colleagues, we will adjourn and reconvene starting early on Monday morning, at 8:30, in Ottawa. See you then. We're now adjourned.

The committee adjourned at 1707.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Gerry Phillips (Scarborough-Agincourt L)

Mr Wayne Lessard (Windsor-Riverside ND)

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service

CONTENTS

Friday 14 August 1998

| | |
|--|--------------|
| Energy Competition Act, 1998, Bill 35, <i>Mr Wilson</i> / | |
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, | |
| projet de loi 35, <i>M. Wilson</i> | R-153 |
| Canadian Association of Energy Service Companies | R-153 |
| Mr Alan Levy | |
| Enron Capital and Trade Resources Canada Corp. | R-157 |
| Mr Richard Shapiro | |
| Ontario Natural Gas Association | R-161 |
| Mr Paul Pinnington | |
| Mr Bernie Jones | |
| Mr Rudy Riedl | |
| Mr Brian Cappe | |
| Mr Fred Hassan | |
| Stakeholders' Alliance for Electricity Competition and Customer Choice | R-165 |
| Mr Dave McFadden | |
| Green Energy Coalition | R-170 |
| Ms Christine Elwell | |
| Mr Greg Allen | |
| Pollution Probe | R-174 |
| Mr Ken Ogilvie | |
| Mr Peter Love | |
| Mr Joe Castrilli | |
| Mr Andrew Frame | R-179 |
| CUPE Local 1 | R-183 |
| Mr Bruno Silano | |
| Consumers' Association of Canada | R-187 |
| Dr Peter Dyne | |
| Mr Robert Warren | |
| Toronto Hydro-Electric Commission | R-192 |
| Mr Mark Anshan | |
| Society of Ontario Hydro Professional and Administrative Employees | R-196 |
| Mr John Wilson | |
| Ms Leslie Forge | |
| Greenest City | R-201 |
| Ms Shirley Roburn | |
| Mr Scott Moore | |
| Bennett, Jones, Verchere | R-204 |
| Mr Peter Budd | |



ISSN 1180-4378

**Legislative Assembly
of Ontario**
Second Intercession, 36th Parliament

**Assemblée législative
de l'Ontario**
Deuxième intercession, 36^e législature

**Official Report
of Debates
(Hansard)**

Monday 17 August 1998

**Standing committee on
resources development**

Energy Competition Act, 1998

**Journal
des débats
(Hansard)**

Lundi 17 août 1998

**Comité permanent du
développement des ressources**

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



**Chair: Brenda Elliott
Clerk: Donna Bryce**

**Présidente : Brenda Elliott
Greffière : Donna Bryce**

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 17 August 1998

Lundi 17 août 1998

The committee met at 0830 in the Delta Hotel, Ottawa.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

The Chair (Mrs Brenda Elliott): Good morning, everyone. The standing committee on resources development is called to order for the purpose of conducting hearings on Bill 35. We are very pleased to be in Ottawa this morning. This is the beginning of our second week of hearings. I am delighted to see that we have three Ottawa MPPs, Mr Baird, Mr Cullen and Mr Conway. I think you're looking forward to a week of interesting submissions.

REGIONAL MUNICIPALITY OF
OTTAWA-CARLETON

The Chair: We'll begin this morning with guests representing the regional municipality of Ottawa-Carleton. Welcome, gentlemen. Before you begin your presentation, please introduce yourselves for the Hansard record. You have 30 minutes, and we hope that you'll leave some time for questions.

Mr Peter Hume: We intend to do that, Madam Chair. My name is Peter Hume, and I am a regional councillor with the municipality of Ottawa-Carleton. On my left is Al Hughes from the region's legal department, and on my right is Dave McCartney, the manager of environmental projects. We are very pleased to be before the committee to talk about Bill 35.

Over the past two years, the region has been actively examining ways of improving governance and service delivery in Ottawa-Carleton. Most recently we have been investigating a unified city concept, and we are going out

to the public to seek their consultation on that option. Part of that uni-city model that we're looking at is the creation of one hydro commission for the entire unified city. The region is concerned that this bill should permit and promote efficiencies of scale in the delivery of electric services. Ottawa-Carleton is concerned that, in light of the current political climate at the municipal level, this bill places inherent restrictions on the ability to ensure delivery of municipal electric services on the most efficient and cost-effective basis.

We are a large consumer of electricity, spending over \$7 million in 1997 for such matters as the operation of waste water treatment processes, water purification, traffic signals and buildings. We also, though, are very innovative in that we generate power through cogeneration at our sewage treatment centre where methane gas is generated in the sewage digestion process. We are also aggressively pursuing the establishment of a landfill gas generation project.

What is most significant from the region's perspective is the possible creation of a region-wide hydroelectric utility either as part of a unified city or within the current two-tier municipal governance structure. There are currently six different agencies delivering power in Ottawa-Carleton. The region is not asking that the legislation create region- or county-wide electric utilities. We're just concerned that undue restrictions not be placed on this possibility as potentially the most efficient means of distributing power in this area and that a region-wide utility be promoted if shown to be the most efficient way of delivering services. Ottawa-Carleton is also wishing to ensure that the municipal electric utilities are granted the authority to compete fairly with private retailers for hydro sales and be able to provide services to the consumers in the most efficient and cost-effective ways.

We have several areas of concern, the first being the amalgamation and restructuring of municipal electrical utilities. The Macdonald commission report and the white paper *Direction for Change* have recognized that there is a need for some consolidation of the number of municipal electric utilities currently operating within Ontario. However, these documents and Bill 35 do not provide any mechanism to require that the consolidation of these utilities take place. At best, the Ontario Energy Board can exercise its authority under section 82 of the Ontario Energy Board Act, 1998, to set standards, targets and

criteria for evaluating the performance of municipal electric utilities as part of the licensing process.

While the Macdonald commission report and Bill 35 contemplate that competitive forces will push municipal utilities to amalgamate and consolidate in order to maximize efficiencies, this position does not take into account the realities of the political climate of proposed municipal restructuring. Local municipalities will naturally be unwilling to amalgamate electric utilities if to do so sends a signal that one component of the municipal service is better administered or delivered on a basis other than that of the local community. This may occur despite the fact that the new responsibilities for electrical demand forecasting and expert purchasing of electricity on the volatile commodities market may create greater demands than can be met by a small local utility. The existing political climate may therefore delay or thwart the amalgamation or consolidation of municipal electric utilities on the most efficient basis.

Sections 130 to 132 of the Electricity Act, 1998, provide a mechanism for incorporating current municipal utilities into business corporations owned by local municipalities. What is not clear from the legislation is whether a municipality not currently involved in electricity distribution, either on its own or through the agency of a commission, may create a business corporation to sell and distribute power. Of a more central concern to the region of Ottawa-Carleton, the legislation does not provide any mechanism by which a regional government may establish a corporation to distribute power on a region-wide basis. At a recent conference organized by Insight Information Inc on the role of municipal electrical utilities, Neill Winger, a senior consultant with Acres International Ltd, presented a paper which stated, "Most preliminary studies illustrate that the greatest savings, and thus the potential for lowering rates, can best be achieved by pursuing a single fully amalgamated county-wide utility option."

Mr Winger also cited studies from amalgamations in Durham region, Grey county, Simcoe county and Huron and Perth counties. In fact, the study in Durham region commissioned by the local utility estimated that the savings to ratepayers would be in the amount of about \$5 million, which is quite a significant savings.

It may be argued that amalgamation of a number of local distributing corporations could help to create the operating efficiencies in serving a broader area. However, the shares of the amalgamated utilities would be held by a number of different municipalities, thereby creating the potential for conflict as to the future courses of action in a rapidly evolving electricity market. If one local municipality purchased the assets or shares of adjoining utilities, the residents of those adjoining areas could see the distribution wires and electrical services in their areas controlled by another municipality which does not necessarily represent their interests. On the other hand, if the assets and shares of the utility were held on a region-wide basis, the interests of residents served could ultimately be represented through their representatives on the regional council.

Bill 35 may also place severe restrictions on the ability of a municipal utility to expand services into areas served by Ontario Hydro retail and on the ability to provide electrical services on a more efficient region-wide basis. Section 83 of the Power Corporation Act currently provides a mechanism by which municipal electric utilities may expand their services into areas served by Ontario Hydro retail by purchasing Ontario Hydro retail assets at a net book value. Under this bill, the Ontario Electric Services Corp will not be required to sell its distribution assets, even if it can be shown that the expansion of an adjoining municipal utility will provide the most efficient way to distribute hydro.

We have a solution, however. We are recommending that the bill be amended to permit the Ontario Energy Board, of its own motion or at the request of a municipality or local distribution utility, to review distribution electricity services within a geographic area designated by the board and to order the transfer of shares to one or more municipalities on such terms and conditions as the board may prescribe. The legislation should also be amended to permit regional municipalities to create business corporations undertaking electricity distribution in which corporation may be the recipient of share transfer ordered by the board. Furthermore, the bill should be amended to preserve the right of municipal electric utilities to purchase the assets of Servco in a distribution area at their net book value.

The second area of concern for the region is the ability of the municipal electric utilities to compete for customers. Bill 35 carefully eliminates virtually all potential advantages that municipal electrical utilities may have over private sector retailers in competing for customers. While the municipal utilities may have the advantage of initially holding all the customers as the default supplier, this may prove more of a burden than a benefit. Municipal utilities will be forced to serve customers who are the least attractive to private retailers because they are the most expensive customers to supply. Private retailers will cherry-pick the best customers, offering discounted rates which cannot be matched by municipal utilities without creating separate competitive affiliates. Any affiliate may be regarded as a branch of the most expensive default supplier.

The Ontario Energy Board will be involved in setting rates for the default supplier. The Market Design Committee has suggested in its second interim report that the default supplier should only be able to purchase, supply and sell electricity on the basis of spot prices. In this way, customers will bear the full risk of any volatility in electricity markets. This limitation seems unduly restrictive. It is becoming recognized that the most responsible way to purchase electricity for resale is by way of a portfolio of purchases undertaken at various stages prior to the actual delivery of power. This helps to provide price stability. It is also probable that over the long term power generators will offer discounts for those purchasing power in advance and thereby ensuring a market for their supply. To restrict default suppliers to the spot market will further exacerbate

the gap in electricity rates between private retailers and default suppliers.

840

We are proposing that the bill be amended to include a power to establish a mechanism set by regulation and similar to the Facility Association for automobile insurers whereby retail suppliers should share the burden assumed by default suppliers serving the most expensive customers who do not reside or operate in rural or remote areas. Furthermore, the bill should ensure that default suppliers are not limited to the spot market for electricity supply. Restrictions may be imposed on the extent of advanced purchasing of hydro to ensure that undue risks are not assumed by the default supplier.

Our next area of concern is rural and remote area assistance. The legislation does not seem to guarantee rate assistance to those moving to rural or remote areas and does not seem to guarantee levels of assistance.

Ottawa-Carleton, therefore, submits that the bill should be amended to provide rural and remote area assistance to residents of these areas as well as a mechanism for ensuring that levels of assistance are maintained at current ratios by reference to default supply rates in other areas of the province.

Our last area of concern is sharing of services with municipalities. We always try to ensure that we enter into cost-savings agreements wherever possible. In fact, the region has entered into agreements with the city of Ottawa for things like road maintenance and other areas where there would be a synergy.

In our minds, there would appear to be a significant potential cost saving in the sharing of services between municipalities and municipal electric utilities. Such areas as fleet management and maintenance, equipment supply and purchasing, meter reading, invoicing and collection can potentially be shared on an equitable basis.

Section 72 of the Ontario Energy Board Act may impose restrictions on the sharing of services. Municipal electric utilities are limited to electricity-related activities and activities that enhance their ability to undertake these activities. The Ontario Energy Board is in a position to enforce these restrictions through its powers of licence suspension and revocation. Decisions of the board in the natural gas retailing field suggest that the board will restrictively interpret the scope of the permitted activities of a municipal electric utility. This presumably will limit the risk of municipal cross-subsidization of electricity and avoid the need to monitor for any possible cross-subsidization. Meanwhile, significant cost savings will be lost which would otherwise have been passed on to customers and taxpayers.

We are proposing that the legislation be amended to permit expressly the sharing of services with municipalities while permitting the Ontario Energy Board to ensure that the municipal utilities are not being unfairly cross-subsidized. The board could hold a generic hearing to establish guidelines for the sharing of services so as to ensure that cross-subsidization does not occur.

Ottawa-Carleton recognizes that many factors are operating to necessitate the introduction of competition to the electricity sector. Nevertheless, competition must be introduced on a fair basis as between municipal utilities and private retailers. The legislation must also provide a mechanism by which power may be distributed in a geographic area in the most efficient way possible in the new competitive environment. In so doing, some protection must be preserved for rural and remote area customers. Changes are needed to Bill 35 if these goals are to be achieved. Thank you very much, Madam Chair. That is our submission.

The Chair: Thank you. You've given us five minutes for questions from each caucus. We'll begin with Mr Lessard from the NDP.

Mr Wayne Lessard (Windsor-Riverside): Thank you very much for your presentation. I come from the Windsor area in southwestern Ontario. We don't have regional government there so I'm not really all that familiar with some of the intricacies of how regional government operates.

Mr John R. Baird (Nepean): Wow.

Mr Baird: From Mr Baird's remark, maybe he's thinking that regional government should be imposed on our area. I'm not really sure.

Mr Baird: No, no.

Mr Lessard: You've mentioned some of what you perceive to be undue restrictions on the regional government or a body incorporated by a regional government to provide electricity services in the region. Currently, as I understand it, you have a number of utilities that provide services within the region and one of the restrictions you see is the amalgamation of those services. Are there any areas where Ontario Hydro provides services as well and, if so, can you elaborate on what you see as these undue restrictions and what the conflicts are?

Mr Hume: First of all, the answer to your question is that there are six existing hydro utilities in Ottawa-Carleton: Ottawa Hydro, which serves Ottawa, Vanier and Rockcliffe Park; Nepean Hydro, which serves Nepean; Gloucester Hydro; Kanata Hydro; Goulbourn Hydro, which serves the village of Richmond only; and the Ontario Hydro retail area, which serves Cumberland, Goulbourn, Osgoode, Rideau and West Carleton.

I think from our perspective there are two areas of concern. Given the healthy competitiveness between the upper and lower tier here in Ottawa-Carleton, we believe that unless there is a mechanism where we can place an appropriate business case before an independent tribunal, we will not be able to see any restructuring of those six municipal utilities. We feel there is a need to have that because other studies done — and I cited the region of Durham — show that the creation of a region-wide or county-wide utility will save the ratepayers in those areas a significant amount of money. What regional governments are all about is delivering services in the most cost-effective, efficient way. That's our main area of concern with the existing utilities.

The other one that we mentioned was the ability to purchase the assets in the Ontario Hydro retail area. What we want to be able to do is to move into those areas on a region-wide basis and buy the assets that exist at their net book value. Right now, as we understand it, the Ontario Electric Services Corp will not be required to sell its assets, even if it can be shown that joining, say, one region-wide utility would be the most efficient way to deliver services to those ratepayers.

Mr Lessard: How do you think that problem is going to be resolved? We've heard this raised on a number of occasions before, and if you don't think you'll be able to purchase Ontario Hydro's assets in those areas that are currently served, then you wouldn't be able to serve the whole area. Is it possible that you see that Ontario Hydro retail may be trying to service that area that's currently served by the utilities? We've heard from Mr Osborne from Ontario Hydro that they intend to aggressively pursue and expand into the retail sector, and perhaps one of the sectors they're looking at is Ottawa-Carleton.

Mr Paul Hughes: In fact that is the main concern. Obviously, Ontario Hydro retail becoming Servco could decide that they're simply not going to sell any of the distribution assets within the area currently served by Ontario Hydro retail even if that were shown to be the most efficient way to deliver power within those areas, for example, moving to a region-wide utility.

I might also mention specifically in relation to the legislation, sections 130 to 132 of the Electricity Act appear to contemplate the rollover of the current utilities into a local distribution company. What is not clear from the legislation is whether somebody, a municipality, for example, who is not involved in electricity distribution could create a distribution company.

Mr Lessard: I'd like to hear from the parliamentary assistant on that issue and also for clarification as to whether regional governments can establish corporations for the distribution of power as well.

Mr Baird: Thank you very much for your most interesting presentation. I wanted to ask a few questions from page 3 of your submission. You recommend that the Ontario Energy Board be given authority to basically impose solutions from Toronto here in Ottawa-Carleton. If there are big cost savings, why wouldn't it be voluntary? Wouldn't the local municipalities and the ratepayers just run to a solution that meant lower hydroelectric rates?

0850

Mr Hume: Of course, the environment that we have here in Ottawa-Carleton is such that, regardless of the cost savings, regardless of whether we can demonstrate — and we have on a number of other services — that there are significant cost savings, municipal entities have not embraced any sort of restructuring initiatives. For instance, we operate a number of trunk sewers and the sewage treatment plant, but discussion of assumption of local sewers has met with significant resistance, regardless of the fact that we can reduce their rates by, on average, 20%.

What we have found and what has been demonstrated here in Ottawa-Carleton is that anything that erodes the current lower-tier entity will be met with heavy, if not permanent, resistance to any sort of change. So what we are looking for is not an imposed solution from Toronto. What we're looking for is an independent body which we can present a business case to, that can evaluate that business case in an independent way and render a decision.

What we're proposing is not unlike what the regional section of the Association of Municipalities of Ontario proposed in its submission on the new Municipal Act where it asked for, and that's all regional government across Ontario asked for, an independent panel to be struck. Namely, we asked that the OMB be vested with the power to hear submissions on municipal restructuring in regions, just because there is such an almost fanatical resistance to an establishment of efficient, effective service distribution.

Mr Baird: But back to Hydro, do you get calls from your constituents, saying, "Would you please amalgamate Hydro?" How many calls would you have gotten in the last — you've been a councillor now for — is this your third term?

Mr Hume: I don't think we get a lot of calls for-

Mr Baird: Have you had any?

Mr Hume: No. I would say you're probably right, we don't have any. But my job is not only to respond to my constituents but to research and review the operations of municipal government, to deliver to them the most efficient, effective service.

What we're telling you is that we've looked across the province of Ontario and we've seen studies done in other regions that demonstrate that there is a significant amount of cost savings to be passed on to the ratepayers by amalgamating municipal utilities.

Mr Baird: But you say you're not aware of any. I haven't heard any calls or any complaints about — for example, in my case, Nepean Hydro, there's a very high level of satisfaction. In our community we elect them; know in the city of Ottawa they are appointed. But I've never heard anyone say: "Listen, this is a problem. Would you please act on it?" Never, not one call, not one letter, not one fax, not one person at the door.

Mr Hume: Regional government prides itself on being proactive in bringing the maximum amount of savings to the ratepayer. We believe in this case that the establishment of a region-wide utility, as demonstrated by studies that have been done across the province of Ontario, will save ratepayers \$5 million. I can tell you, I know the ratepayers want to save money. We've seen that.

Mr Baird: OK. If this type of proposal were adopted and there were liabilities in some hydro — for example let's say the city of Ottawa had some infrastructure liabilities or some debt. I know Nepean Hydro's long-term debt levels used to be well over \$6 million. They're now down to about half a million last year, so they may be already gone this year.

But if in the city of Ottawa there is a significant amount of debt vis-à-vis the age of their hydro substations, which

think are on average 35 years old whereas in Nepean they're seven, who would pick up that liability? Would that be borne by Ottawa ratepayers today?

Mr Hume: It may surprise you, Mr Baird, that if I understand what Ontario Hydro will be presenting to you in the next little while, Ottawa Hydro is debt-free, so it's significantly different from Nepean.

Mr Baird: But on infrastructure debt.

Mr Hughes: My understanding is Ottawa Hydro is debt-free. In terms of how any amalgamation and restructuring could occur, presumably the Ontario Energy Board would address that as part of its order on the transfer of assets, while ensuring that the existing areas are required to pick up the outstanding liabilities.

Mr Baird: Could I tell people that the position of the regional government in Ottawa-Carleton was that if there is a liability, it should be borne by the pre-existing ratepayers?

Mr Hume: I think what you can tell people about what the region of Ottawa-Carleton would do in that case is that they would do our best to protect ratepayers and to provide them with electricity at the lowest possible cost. It is not our goal to make someone else bear some other costs.

The Chair: I'm going to interrupt, I'm sorry. Moving to the official opposition, Mr Conway.

Mr Sean G. Conway (Renfrew North): Gentlemen, I very much appreciated your presentation. I found it specific and helpful. I must say, I feel almost embarrassed about interrupting the previous dialogue because it's a very good dialogue to hear Alta Vista meet Nepean.

Someone once said, "All politics is local." I must say I'm very impressed, particularly with my colleague from Nepean, to know that localism is alive and well, notwithstanding ideological imperatives, which would suggest on the face of it, Mr Hume, that if there were ever a place to rationalize the municipal electricity distribution system, it would be here in the national capital.

I want to ask you a two-part question because I think from the point of view of the customer, the customer of electricity, which is vital commodity, would expect and would want as efficient and as reliable and as attractively priced a commodity as is possible. My sense is that is what most people, whether they live in Alta Vista or Nepean or Vanier or Bell's Corners, would want.

People in the national capital and eastern Ontario lived through a very memorable experience this past winter. I grew up in the valley and I was on the edge of the ice storm, but I was very impressed by the work that the regional municipality did, and the municipal utilities in the area. My impression was that through the ice storm, local authorities performed much better than Ontario Hydro, for whatever reason. I want to ask you a specific question: What would be the advice that you and your colleagues would offer this committee as we contemplate the changes under Bill 35, based on your learned and lived experience through the ice storm?

Were there problems with Ontario Hydro's retail services? What did you feel those problems were, from your own experience and that of your compatriots in the

region? If there were problems beyond what would be reasonable given the severity of the storm, would it give you any comfort to know that the stated testimony of the president and chief executive officer of Ontario Hydro to this committee last week was that Servco plans an aggressive expansion in the distribution business in southern Ontario? By Servco, I mean the retail division of Ontario Hydro as it will be restructured.

Mr Hume: Based on our experience, and if you would talk to some of my colleagues in the rural areas, Betty Hill and others, they were not happy with the service that they received from Ontario Hydro. I, on the other hand, was served by Ottawa Hydro and I was served very well. I had power long before my rural counterparts. So I would say that Ontario Hydro was not responsive, or not responsive enough, to the crisis. In fact, it was quite some time before a representative of Ontario Hydro was joining our twice-daily briefings on the state of the emergency.

Mr Conway: Was that not in fact a real problem, that for people in Ottawa and Nepean and Gloucester, the power centres, the decision-makers, were here and were, on the spot, exercising hourly judgment, whereas it took days to get people in Toronto at Ontario Hydro headquarters seized of the severity of the problem, that they were from away and it was very seriously reflected in the delayed decision-making?

Mr Hume: You're exactly correct in that and that's one of the reasons why we are here today telling you that we feel that this Bill 35 places severe restrictions on the municipal ability to expand into areas served by the Ontario Hydro retail area. That's why we want these portions of the bill to be changed, because we believe that we will be able to serve those areas now served by Ontario Hydro in a more cost-effective, efficient manner, but also in a manner that will be more responsive to their individual needs and concerns.

The Chair: Thank you very much. The committee appreciates your taking time to come before us and starting off our week with your advice.

0900

Mrs Helen Johns (Huron): On a point of clarification, Madam Chair: In response to Mr Lessard's comments, subsections 130(2) and (3) allow ownership to happen, and you can take shares from, for example, Nepean. You could form a new company and each of those surrounding areas would have a share in the new corporation. So it could be done.

What this bill does not take into effect is that it has to be done. We want amalgamations but we have not used any kind of a stick approach to this. We believe that economies of scale will push it.

In addition, subsection 78(5) of the Ontario Energy Board Act allows for the expansion of rural and remote assistance, which is another section they talked about in their presentation.

BRYNE PURCHASE

The Chair: Now calling Bryne Purchase, please. Good morning. Welcome to the committee. As I'm sure you've been briefed, you have 30 minutes for presentation time and we hope that you'll leave time for questions as well.

Mr Conway: Madam Chair, my schedule shows an hour.

The Chair: Mine does, too. I stand corrected. I apologize. Yes, you do have an hour.

Dr Bryne Purchase: I have an hour to speak, Madam Chair?

The Chair: The rule says that the presenter may use the time any way you wish, but we always hope that you'll leave time for questions.

Dr Purchase: I will endeavour to leave a great deal of time because I'm sure that you have a way of getting at what I think that's probably better than my prepared presentation.

It's an honour to speak before this committee. I believe strongly in an informed and effective Legislature. The work of this committee is a very important part of that exercise, so again, it is a great pleasure for me to appear here.

Ontario Hydro is an old and venerable institution. It has served Ontario well, but clearly the consensus is that the time has arrived for dramatic change. I believe that Bill 35 is an effective platform for launching these historic changes.

As you know, I was engaged by the Ministry of Finance to carry out a public consultation with selected stakeholders on the matter of Ontario Hydro's potentially stranded debt. I thought it would be useful today to provide you with some of my own thoughts on the process that I was so fortunate to be involved with.

Before I do, let me thank the people I was involved with. It was an extremely educational process. I learned a great deal and I would like to particularly take the time to thank the stakeholder groups that I was involved with. This was a really interesting process. The ministry officials from finance and from energy, science and technology and the officials from Ontario Hydro, as well as other people I met, the Market Design Committee officials, the Ontario Energy Board officials, I'd like to thank them all for their professionalism, for their candour and for their willingness to spend long hours to explain quite complicated matters to me in some detail. Having done that, perhaps I can turn to my presentation, which I hope will be short and to the point.

First of all, let me point out that the things that struck me first were the paradoxes of the stranded debt. When I use the term "stranded debt," I'm referring here primarily to what the legislation refers to as residual stranded debt, which is the debt that cannot be covered by revenues from the new companies as a result of the introduction of competition. The other stranding, if you like, due to commercialization is an issue that I think is less significant, less important to the province.

There are some important policy issues associated, of course, with commercialization related to taxation and to a commercial rate of return and to the selection of a capital structure for the new companies, but those are issues that I think are all of secondary importance to the primary one of the impact of competition on Ontario Hydro's stranded debt.

To return to my main point, the paradoxes of the stranded debt are that a successful competition policy means more stranded debt. The more terrible the old Ontario Hydro was as a monopoly, even if a regulated monopoly in terms of its inefficiencies, the more competition we have in the new marketplace, the more stranded debt we'll have. It is indeed a paradox that, in your success in the introduction of competition, you arrive at something which we refer to as stranded debt.

The second thing, of course, about stranded debt is that it is a sunk cost. That is, it is not a cost which is something that's new that we have yet to encounter. We are already liable for this cost. It's cost which has been incurred on behalf of the ratepayers, customers, in Ontario and will have to be paid, regardless of the performance of the new companies.

While I say it's a sunk cost, it matters what we do, and one of the things that I want to stress for the committee is the importance of an effective governance structure for the successor companies. These are important assets and it is extremely critical to the economic performance of this sector of the economy that we get the maximum out of those assets. That will in large measure be a function of the governance structure of the new companies.

My second major point deals with the question of how much stranded debt. My first take on this, and it's a position which I have maintained throughout this exercise — although I have heard many experts on the subject and many people who are much more knowledgeable than I on Ontario's electricity sector wrestle with the question of how much stranded debt, my underlying feeling about this is that it is a virtual impossibility to get a correct forecast. In other words, I was impressed from the beginning about the hubris of thinking that we will be able to forecast in detail the value of each of these assets out into the future over a very long period of time. That's not to say I don't think we have to do that or to undertake that technical exercise, but I do think that we have to acknowledge that it is unlikely that we will be correct in that exercise. Therefore, the appropriate position to take is that we must set ourselves up so that we can cope with the uncertainty, we can cope with the fact that we may well be wrong.

Indeed, there are ways of doing that. I accept that we have to fix the capital structures of the new companies. Therefore, we have to value the assets and implicitly, therefore, value the stranded debt. At the same time, however, we can make the competitive transition charge adjustable, based on experience, and indeed the legislation provides for that possibility so that if we miscalculate the stranded debt, we can, ex post, adjust the stranded debt charge. At the same time, we have to make sure that we have appropriate performance incentives in place for the

new companies to ensure that they have every incentive to perform well in their new environment and to minimize the amount of stranded debt.

The last question I want to deal with is the question of who should pay. The underlying philosophy of stranded debt recovery, as I understand it, is that certain investments have been made on behalf of the customers of Ontario Hydro and that these investments were made in good faith and in full understanding of the needs of both the present and future customers. These investments were made under a particular regime of a regulated monopoly. We have now chosen to change the regulatory environment such that under the new environment with the introduction of competition, it may no longer be possible to recover the full value of the original investments. Therefore, it is incumbent upon us to allow the owners, in this case the taxpayers of Ontario, to recover the value of these investments that they undertook in good faith. This is something that customers, for the most part, I've found, were perfectly willing to consider.

910

There are two issues in the recovery of the stranded debt. One is a question of fairness and the other is a question of economic efficiency. Incidentally, I've found that fairness and economic efficiency, while they are sometimes at odds, in this case very often led to the same answer.

On the matter of fairness, I've found a substantial consensus around the view that you should pay according to your contribution to the problem, and on the matter of efficiency, that we should make the charge non-bypassable. That of course would also make it fair in the sense that no particular customer could, through changes in their consumption behaviour, avoid paying their share of the cost which they had contributed to.

To wrap that point up then, fairness and efficiency means that you pay according to your contribution to the problem, and that would imply, in my view, that there may well be some exemptions from where you were not previously a customer of Ontario Hydro. Secondly, it would not be possible to bypass the charge. Bill 35 makes provision for, effectively, a non-bypassable charge, so I think, in principle, the power is given to the government to make this charge both fair and efficient.

That concludes my formal remarks. I would be very happy to take questions at length now.

The Chair: Thank you very much. We have 15 minutes for questioning from each caucus. We'll begin with the government caucus.

Mr Lessard: Madam Chair, I wonder if I could make a suggestion that perhaps you rotate at five-minute blocks, that's acceptable, because things might arise as a result of questions from other people.

The Chair: Sure, if everyone is agreeable.

Mr Conway: Or split it — well, whatever is easier.

The Chair: Okay, seven, seven, seven.

Mr Conway: Something like that.

The Chair: Okay, that's what we'll do then, seven, seven, seven. Dr Galt, you're on.

Mr Doug Galt (Northumberland): A two-part question, it relates to management change that may be required at Ontario Hydro. We've heard over and over again that the major problem of this monopoly has related to management. We've heard it from the Power Workers, we've heard it from the society, we've heard it from the general public, and Ontario Hydro in general. My personal observation on the Hydro select committee, particularly when touring Pickering, is that I couldn't believe how many people, so-called workers, were there to watch us go through the plant. It really struck me that these people must have a job, and it wasn't to come out and watch us go through the particular plant. The evolution of this organization as a monopoly is typical of a monopoly, as I understand it.

My two-part question is: With a stranded debt, is this going to be based on it operating in the future as a monopoly or as a competitive company? If it's a competitive company, then what changes are going to be required in Ontario Hydro to become competitive? Did they not keep up with all the corporate changes in the late 1980s, the way they sort of flat-lined administration? Are those the kind of things they will have to do to compete in the future? So how is the stranded debt going to be calculated, monopoly versus competitive company, and what are they going to do with the organization to be truly competitive?

Mr Purchase: On the first question, of course, the stranded debt arises to the degree, as I indicated in my remarks, that competition is successful in driving down costs and prices. The more stranded debt we have, the more really effective our competition is and the more successful in the long run our policy is. If, on the other hand, that does not happen, that is to say we have a very small stranded debt, we either had a very efficient monopoly or we have a very ineffectual competition. Either might be possible.

In most cases, if the studies — I've had opportunity in my career to look at a lot of these studies. Invariably, the introduction of competition, sometimes in the context of privatization but not always, to monopoly public services has resulted in dramatic productivity improvements. The consensus of academic opinion, supported by empirical fact, would suggest that we would have very substantial improvements in productivity as a result of an effective competition.

On the question of what changes are required by the management of Ontario Hydro, that's an important issue. I can't pretend to have studied that in detail. I want to emphasize that next to the introduction of competition itself I regard the governance structure and the relationship of the government as owner to the management of Ontario Hydro as the single most important economic issue on the table.

Obviously what we have to do is put in place a tough regime that makes sure that management functions. I think benchmarking performance on the cost side is appropriate. I think costs and outputs need to have detailed performance benchmarks. We have to make sure there's no upside for the management if prices turn out to be higher than

forecast. I don't think they should get particular benefit from that. It's things like this that I would do.

Mr John Hastings (Etobicoke-Rexdale): I'm somewhat mystified by your enjoining fairness and economic efficiency together when you deal with the allocation of the stranded debt. Since we already have a monopoly in Ontario Hydro and you have the retail players and the local utilities, are you telling me then that in the allocation of the stranded debt it will be allocated on the basis of which of the local utilities throughout the province can show, through whatever list of indicators, that they will have less stranded debt, say, in Sarnia versus Ottawa, or vice versa? How are you going to actually allocate the stranded debt to the MEUs, since they're the major retail players in the field and you haven't got the new ones in the field yet in terms of the stranded debt, yet at the same time be fair to all the participants in that exercise?

Dr Purchase: These are issues that are yet to be determined, so I can't presume to know for sure how this will take place. The stranded debt is allocated in effect through the levying of the competitive transition charge which is provided for in the legislation. That charge may be based, for example, on current consumption. To the degree that current consumption reflects previous consumption, you will pay according to what your previous contribution to the stranded debt was. So you will only pay according to what you consumed. As I say, to the degree that your current consumption reflects your historical consumption, presumably you will pay according to what you contributed to the stranded debt problem.

Remember that there is a problem because we built facilities to serve you which are in principle no longer economic in the new environment. We're not asking you to pay a dollar more or a dollar less than what you would have had to pay if we had continued with the current monopoly regime.

Mr Hastings: So it's not going to be economic efficiency so much as it's going to be consumption by the various players at the retail level.

Dr Purchase: Yes, consumption will determine —

Mr Hastings: The larger the consumer, the larger the allocation of the stranded debt.

0920

Dr Purchase: Yes. Economic efficiency refers only to the fact that we don't want — we think of the stranded debt as in principle a lump of money which has to be recovered which is already owing. It's not something we can avoid paying; we have to pay it. We're just trying to find an efficient way as well as a fair way to allocate it among people in Ontario. Economic efficiency in the very strictest sense would say that we should try to find a way which doesn't alter their behaviour in any way, that they don't try to bypass by changing their consumption patterns or switching to another fuel or self-generating or whatever other options they may have. In principle, with the downside being you have to make this practical, we would simply try in the design of this tax to avoid changing your behaviour in any way in response to this act, that's all.

Mr Conway: Dr Purchase, delighted to see you. You are a critical witness, because yours is one of the central questions. I want to pursue some of the earlier points as specifically as I can, and I want to do so from the point of view of a residential electricity customer, whether in the city of Ottawa, in the town of Carleton Place or in the rural areas of Renfrew county that my friend the warden is here from Cobden to represent with me today.

I'm a residential hydro customer. In my own case, I do believe that competition in generation is the single most significant policy change that will give me down the road the benefit in rates that I hope for out of policy. I've got to tell you, my concern is that if I don't get competition in generation as a centrepiece of this change, I'm not likely going to get much, if any, benefit on my rates which, together with reliability and environmental concerns, are my primary issues here.

Thinking about rates, I've also got to think about the stranded debt. I'm not a professor of economics or fiscal policy, but I've got to believe that a corporation that's got a \$32-billion debt, some of which is going to be stranded — "some of which" means several billions of dollars are going to be stranded — is in the short term not going to be good news for my residential or farm electricity bill.

To the best of your knowledge, using reasonable assumptions, what would you tell me this morning, as someone who has looked at this, is your best guess as to the order of magnitude that this stranded debt is likely going to be as we begin the process of a new electricity policy? You've heard the range. Some people say it might be very little; some people say it's going to be \$10 billion; other people say it could be as high as \$30 billion. In your considered opinion, what number would you estimate is the likely number?

Dr Purchase: It's good to see you again, Mr Conway. Mr Conway and I go back a long way. I remember briefing him, in another life, on lots of other issues.

Mr Conway: You were very, very helpful then, as I know you will be this morning. What's that number, Dr Purchase, in your considered opinion?

Dr Purchase: I honestly do not know that number. My concern, and the thing I tried to convey to the members of this committee and that I certainly have tried to convey to anyone who would listen to me in the ministry and anywhere else, is that we have to design a process which will allow us to deal with whatever that number turns out to be, based on actual experience. The reason is that there are very significant risks involved with getting that number wrong. There is a tendency to believe that these assets are worthless and that we are going to have a huge stranded debt. I personally don't believe that.

Mr Conway: This is getting helpful. So it's not huge. Then does that mean it's more likely going to be in the order of \$5 billion to \$10 billion, as opposed to \$25 billion to \$30 billion?

Dr Purchase: First of all, on the matter —

Mr Conway: Well, if it's not huge, Bryne —

Dr Purchase: Fair enough. What I'm saying is that I think that the range is a lot bigger than what we are

sometimes lead to believe, that we tend to hear extraordinarily large numbers which imply incidentally that those nuclear assets are not going to come back and be the productive assets that technologically we know that they can be, that it's just a management problem. I think management problems can be fixed.

Mr Conway: Bryne, Mackenzie King lived at Kingsmere, not at Carleton Place. You need to help me because I'm serious. I know it's not easy, but I'm the customer. I'm one of those millions of residential and farm customers. I know there are problems. I know there probably aren't any easy answers. But people are talking to me about benefits. I expect the big boys, the big industrial consumers are going to be able to get a break because they'll have a focus and resources that I'm not going to have. How can I begin, as a member of this committee, to discuss this without some idea of how big a number that might be?

The second part of it is, the bill contemplates a menu of six categories of charges to help write it down. We know from Steve Dorey's comments last week, and I understand this, that finance clearly does not want to have to apply the wires charge if at all possible. It's pretty clear from Mr Dorey's testimony that the so-called competition transition charge is the last of the options they want to apply. We've got the special hydro tax on the MEUs' gross revenues; we've got the provincial government's collection of new federal taxes on players in the game; and three or four others. I need to know, how big is it going to be? Then what menu, what order and what mix of these several charges is going to be applied to me, the residential and farm customer? Because I'm from Missouri, I have taken oaths of faith before and I've landed with a very big bruise on my head.

Dr Purchase: My answer to that is I believe the legislation provides the maximum amount of security, if you like, for the customer. We can honestly say that you will only pay according to the amount of actual stranded debt. You will not be stuck with some economist's prediction of billions of dollars and you will pay that regardless of the future price of electricity.

Remember the problem here is — and here I'm talking about economic stranding or what they call residual stranded debt — if you say that the residual stranded debt is, I don't know, \$5 billion, let's say, and that's based on an articulated price forecast which is a low-price scenario going forward and in fact prices turn out to be higher than what you forecast that stranded debt on, if you then say, "We're going to collect that \$5 billion no matter what," you're going to drive prices up inadvertently. What I'm saying is you have in place a mechanism which can at least assure customers that you will not do that.

Mr Conway: I understand that. But remember, according to Mr Dorey — I'm no expert, but he certainly sounds pretty compelling on the subject — the first calculation that has to be made is, how much of the existing debt can the successor hydro companies, Genco and Servco, take? What can they take? Then whatever is left over is, in a sense, the stranded debt. You have gone out of your way

today in a way that is very helpful to warn this committee that governance is key. We'll come back to that on the second round.

But I'm the residential hydro customer. I'm worried about the interest. I'm worried that the interest of Genco is not going to be my interest because their interest is going to be to shuck as much of this as possible and to be lean and to get to Kentucky. I'm also worried about the government — not just necessarily this government, any government — because my provincial government is not without an interest. The Minister of Finance is a critical umpire in this game. But he/she is an umpire with a very substantial benefit because some of these new hydro taxes, once the stranded debt is paid off, are going to come into the provincial treasury.

Again, I'm looking at my situation. I can't find out what stranded debt is but I know it's going to be in the billions. I know that Genco's going to be working overtime to dump as much of it off their back as they can. I know that my government is going to be in a very significant situation of benefit as they come to critical choices. Because, for example, the call as to when the stranded debt is relieved is not without benefit to the Ontario government, the very people making the call. So who's looking after my interest as a residential or farm customer to make sure that I don't get stuck with a disproportionate amount of this apparently unknowable, multi-billion-dollar stranded debt that apparently is not going to affect my hydro rates in the next two, three or four years?

0930

Dr Purchase: Well, sir, my attempt to answer that — and many of the points you make, I agree with; I don't see how anyone could not — is that the solution is not to have a specific number, if you like; not that you won't, you'll get that. My understanding is you'll get that this fall when they value these assets at least initially for the purpose of commercialization of these companies. But the protection to the people of Ontario, other than in the work of the Legislature and this committee, and to the taxpayers of Ontario, really lies in the quality of the institutional structure that you set around this, which is embedded in the legislation and which you set around the future operations of this company and of the financial holding company.

Mr Lessard: Dr Purchase, you've survived well the first round of cross-examination by Mr Conway and I can understand your reluctance to divulge to us some number that represents your best guess for stranded debt. However, eventually that number will be determined and it will at best be a guess, as you've indicated to us this morning, and not only that, but that is a decision that's going to be a political decision. It's one that's going to be based on various information provided by fiscal planners and people with knowledge of assessment and financial backing. But ultimately it's the government that's going to make the call as to what the amount of the stranded debt actually is.

You've told us this morning that it's a virtual impossibility to get that number right, which means that the number's going to be wrong, and I want to ask you what you think the implications of getting the amount of the

stranded debt wrong are. If it's too high or if it's too low, tell us what you think those scenarios are three to five years out.

Dr Purchase: Yes, I think it is. I mean, I was a forecaster for many years and I think once we actually hit it bang on. I'm not sure exactly why that was but, as you can imagine, as sophisticated as this work is — and it is sophisticated and the government has hired extremely capable people to help it do this. They did not hire me for that purpose; I wish sometimes they had. There are highly technical and highly expert people, many of whom I'm sure will address this committee, at work on these important subjects.

My own personal view on this is that, while I believe that work is absolutely essential, as I said, to actually establishing the commercial value for these companies, we have to deal with the fact that we have uncertainty. I said that there were consequences, and you've asked me the question, what are the implications?

Let's begin with an overestimate of the stranded debt, which means you've underestimated the value of the assets, right? If you've underestimated the value of the assets or overestimated the stranded debt, one possibility is that if you did not make the stranded debt charge adjustable but made it a fixed amount — an overestimate of the stranded debt implies that, let's say, prices turn out to be higher than what your forecast was, so there wouldn't be as much stranded debt — you have higher prices. But if you say, "We're going to collect that overestimated stranded debt regardless," in other words, if you treat it as a fixed amount you're going to collect no matter what the future brings, then you're going to drive prices up because you're going to make consumers effectively pay twice in that instance. You have to have, in my view, the flexibility in the legislation, and I believe it's there, to adjust if you've made a mistake on the overestimate.

The other thing is if you overestimate the stranded debt or underestimate the value of the assets, you've really potentially left some money on the table as far as the management is concerned. The management would obviously like to get assets that are undervalued and then presumably perform extraordinarily well when it turns out that this undervaluation is demonstrated by the marketplace. Now you have to remove the incentive for that. Again, this comes back to the question of the governance structure that you have in place for these institutions. If you have underestimated —

Mr Lessard: Have we removed this incentive in this legislation?

Dr Purchase: I think the legislation provides you with the opportunity to do that. I can't say that it does it, but it certainly provides it. The legislation, as I understand it, is really a platform that does provide for ample opportunity to do many things. The real issue will be an ongoing monitoring of how well this is done.

Mr Lessard: I'm sorry I interrupted you.

Dr Purchase: I think if you overestimate the stranded debt, you undervalue the assets, and the converse to that is if you overvalue the assets and underestimate the stranded

debt. In that case, what's happened is that then you leave the taxpayer or the owner at risk. Then we have to pay through another mechanism. If prices turn out to be way lower than what we otherwise thought or Ontario Hydro loses way more market share than we thought, we're only going to collect a fixed amount of stranded debt and that amount now turns out to be too small, then the taxpayer has simply lost value and we have to find the money someplace else.

Mr Lessard: And that would fall on the shoulders of taxpayers?

Dr Purchase: Presumably. The consolidated revenue fund would have to be tapped for the difference. This is money owing by the Ontario taxpayer, because all this is guaranteed debt. It's not so we can somehow deke out and make somebody else pay. We do finally pay. It's just an issue of whether the payer happens to be a ratepayer or the taxpayer. There are some differences.

The other issue is how effectively we can make these assets in the future, because if we can make them hum again, if you'll forgive the pun, then obviously we'll lower the real economic cost to the province.

Mr Lessard: I guess my concern is that part of this government's agenda, I think, is towards the privatization of Ontario Hydro and I don't want to see incentives in this legislation such that there is the real possibility that Ontario Hydro may not be successful in the competitive market in the future and therefore be forced to sell its assets to private investors at fire sale prices to try and recover not that original investment but at least as much as we can to recover the stranded debt before they collapse ultimately, if you think that is a possibility.

Dr Purchase: I don't necessarily share your view on privatization, but I do share your view that it would be a shame if we sell these assets and somehow have tricked ourselves into believing that they're not worth very much when in fact they are.

Mr Lessard: That leads me into the governance issue. You believe, and I think appropriately so, that the governance is very critical here, because we don't that fire sale to happen. Do you believe there should be more government control or intervention or less government control to deal with that?

Dr Purchase: I don't think it's a question of more or less in this case where the government will be the owner of the assets, and it's then a question of the nature of the governance structure that's put in place as owner vis-à-vis its managers to extract the maximum value and to provide the proper incentives for its managers and other employees in Ontario Hydro to utilize these assets to their maximum effectiveness.

Mr Lessard: As a legislator, I guess I'm faced with this choice of how it is that we ensure that after going through this whole exercise we don't end up with something that looks exactly like Ontario Hydro in the future that therefore possibly commits the same errors that got us into this situation in the first place.

Dr Purchase: I think you have definitely identified an important issue.

0940

Mrs Johns: Thank you very much, Dr Purchase. I'm just going to ask you a couple of short questions. Should this legislation entrench in it something with respect to lower pricing? Should there be a statement in here that prices must be lower than they are now, for example?

Dr Purchase: My answer to that is no. We have now embarked on a new course, if you like. We are opening up the market. We're no longer going to have a regulated monopoly that we can order to do whatever we wish it to do, insulated from all other markets. We are now going to be fully integrated into, or least progressively integrated into, a North American market through inter-ties and through the entry of new companies into Ontario in the production of electrical energy.

Once you do that, once you have started down that course, there are great benefits, as we know. Competition, when you have it, is an effective device for lowering costs and lowering prices and improving productivity, but it's also true that you can no longer then simply control the price. It would be a mistake for the government to guarantee customers a future price. If it turned out that they were correct, it would simply be lucky. We can't control the price of oil or natural gas, which are the competing energies, and in fact are also used in the production of electricity, certainly natural gas and coal. These prices can go as their markets will take them, so we couldn't control prices, no, and we shouldn't.

Mrs Johns: My last question, just because I want to give Mr Gilchrist some time: It's been the contention of Mr Conway and of a number of people who have come before us that they need to know the stranded debt number before we enter into this bill. It's been my contention along the line, and I think the government's contention, that there are mitigating circumstances within this bill that will allow us to alter specific things if we get the dollar value wrong for the stranded debt, for example, CTC charges and other things outlined. Can you explain what you see as the mitigating controls and how they would kick in, given that we get the stranded debt number incorrect one way or the other?

Dr Purchase: I think you've identified it. The CTC, as read the legislation, can be changed by the minister and adjusted ex post according to actual experience in the marketplace. That, to me, is the single most important design feature to alleviate people's concerns about our ability to forecast accurately the stranded debt. That, I think, is effectively the thing that I would point to in answer to your question.

Mr Steve Gilchrist (Scarborough East): Thank you, Dr Purchase. I guess there's certainly a lot that has arisen from the comments you've made, but I'd like to come back to one point. You said that it would be almost impossible to set an exact price and Mr Conway took you down the road. He's just that residential consumer in Cobden and he's concerned about his price.

Let me posit a scenario to you. He stays an Ontario Hydro customer. If this is done accurately, the debt that is considered book debt will continue to be paid by Ontario

Hydro as part of its charge to you, that customer, and the other debt, presumably divided pro rata per kilowatt hour, would continue to be paid by Hydro as a fee to the Ontario government in some form. So for that residential customer, if there was no new competition and you stayed an Ontario Hydro customer, would your price of electricity, barring any other changes by the local utility, stay the same?

Dr Purchase: First of all, there are some institutional arrangements that are slightly different than what you've outlined there. But if we go forward, for example, and the wholesale price of electricity falls but we're adding on top the CTC and it's not a fixed amount, we're just simply picking up the cost which is stranded by virtue of the lower price, then I don't see why the price would change in the future until such time as the stranded debt is discharged.

Mr Gilchrist: It has to be said, of course, that simply the passage of this bill does not change the fact that 40% of what you and I are paying for our electricity to Ontario Hydro is existing debt service. You would agree with me on that.

Dr Purchase: Oh, yes.

Mr Gilchrist: Perhaps a more compelling area to look at would be the fact that Hydro charges the same price to every MEU, correct, give or take? It's a tough question to pose perhaps to the MEUs. Maybe you'd give a less biased answer.

If you take 90% of what's charged by — let's use Nepean as an example, and the chart Mr Baird is kind enough to bring along to every meeting, where \$78.55 is the price for 1,000 kilowatt hours, actually less a 5% rebate last year. That leaves you with 6.71 cents per kilowatt hour that they pay to Ontario Hydro. If that's what Nepean paid to Hydro, presumably that's what all MEUs paid to Hydro. But isn't it intriguing that the difference between that and the actual consumer rate for a rural Hydro customer is 1.83 cents, and in Toronto it's 2.84 cents. So the total operational overhead in Nepean is 73 cents. It's two and a half times as much for a Hydro customer and four times as much for a Toronto customer.

Is it more likely that that's where future savings are going to come from and that's where the consumer should be looking to find new efficiencies?

Dr Purchase: I've read the studies which suggest that there are very substantial efficiencies available to us in distribution. Absolutely.

Mr Conway: At the outset, I want to just let the committee and the assembly know that I've known Bryne Purchase a long time and he is a very bright, competent, knowledgeable person who has served —

Mrs Johns: That's why the government hired him.

Mr Conway: I was delighted that the government chose to bring Dr Purchase on board. It's because I know of his ability and his past that I want to be as aggressive with him today as possible. I suspect Bryne Purchase could tell us what he knows about his experiences with Ontario Hydro over 25 years of public service. It would make for quite an interesting book.

Mr Baird: This is quite an interesting question.

Mr Conway: I will also say Mr Gilchrist is right: There are savings to be made on the distribution end, which is 15% of the total cost. Notwithstanding the evident tensions between Alta Vista and Nepean, some of those things are going to have to happen, and they're not going to be easy, all politics being local, I say to my friend from Nepean and Alta Vista and anyplace else. But let's not forget the fact that distribution is 15% of the total bill. Everybody who has looked at this, Bryne, has said it's the generation side, 70% of the bill, where you've got to get the big savings to produce the discounts that we all want.

I favour competition. I think everybody on this committee realizes that the monopoly, particularly the post-Second World War monopoly, is over and it can't be continued. My great fear is that for whatever inadvertent or other reason there's a lot of Hydro's monopoly still sitting underneath Bill 35. Are you concerned, knowing what the Macdonald committee told us two and a half years ago — and they couldn't have been clearer. The advisory committee on electricity reform had as its centrepiece a substantial disaggregation, breakup, divestiture, call it what you want, of the massive power of Ontario Hydro's monopoly.

The government in its white paper last year specifically ruled out divestiture beyond the Genco that we got, the Genco that's going to have 85% to 90% of market power when this new world order of competition begins within 12 to 18 months. Is that not a problem, Dr Purchase, to getting the competitive juice that we all want to drive prices down for everyone?

0950

Dr Purchase: I have to first of all say that there is the Market Design Committee which is looking at this issue. The government didn't invite me to spend my time thinking about competition. The Market Design Committee, as you know, is peopled by individuals of incredible talent who are no doubt able to discern anything that I could do.

Mr Conway: The Market Design Committee, a copy of whose second report I have in my hot little hands, is blunt in reinforcing the message that the Macdonald committee made two and a half years ago. They're not only blunt in warning of the problems of too much market power. They also, in their report on page 16, the report of just last month, warn us that if you're not going to have a breakup of Ontario Hydro beyond the Genco and you're going to then rely on what they clearly feel are second-best measures, one of which is the so-called vested contracts, and let me quote:

"The temptation may be great to use vesting contracts as a non-transparent mechanism to recover stranded costs by imposing contracts with inflated prices on distribution companies and their customers. This is likely to seriously distort the operation of the competitive market and can only achieve its objective if retail customers are made captives of the retail companies for some period of time and prevented from exercising the ability to choose other lower-cost suppliers. Without a captive customer base, retail companies holding contracts with the contract price

set above the market price would face a high risk of bankruptcy."

And we're talking about vested contracts as a likely alternative.

Again, back to my residential and farm customers. We're not getting a disaggregation; we're not getting a further breakup of Ontario Hydro. That is clearly going to lead to the possibility of anti-competitive practices by Genco in the early days. We are almost certainly going to get vesting contracts, which are, according to the Market Design Committee, a real Trojan Horse to dump a disproportionate amount of whatever stranded debt there is on the backs of the millions of residential and farm customers. I want those people to get the equity that you advertise. I think you're absolutely right. How do we protect them?

Dr Purchase: Let me say here that I am talking now not about the work I did for the government of Ontario but just simply as a private citizen observing what's happening. I haven't read that particular report in detail, having been on holiday.

Vested contracts I think are still a live option, not vested contracts to recover stranded debt but vested contracts to remove the incentive of Ontario Hydro to gain the market in some way. As I say, without having read that particular page that you read from, I just make that observation. I don't think vested contracts should be ruled out as a way to mitigate the incentive for Ontario Hydro, but certainly vesting above the market or something like that is not a way to recover stranded debt. We have the mechanism to recover stranded debt.

Mr Conway: The concern I have is that there's a basket of choices there. There are five or six or seven instruments. All I want to know as a residential or farm customer is that the instruments chosen and the mix of those instruments is fair to everybody.

A question on governance, because my time is running out.

The Chair: Yes, your time is running out.

Mr Conway: I want to ask you this question. On governance, I think you make a very good point. I am terrified as a residential customer right now that I've got a situation where at Genco I've got the chairman of Ontario Hydro, Bill Farlinger, a bright guy by all accounts, who at one and the same time is the chairman of Ontario Hydro and has just taken an appointment to the board of Newcourt Credit. Newcourt Credit has made no bones about what it's into: It's into the business of getting more active play in the energy business.

I'm saying, again as a residential customer, whose interests is Bill Farlinger serving? What kind of governance mechanism is there to protect me against Farlinger on the one hand running Ontario Hydro and on the other hand serving on a private corporation that has stated its desire to get more aggressive in the electricity business? Is that not a governance concern?

Dr Purchase: I think this probably could be put under that heading. I don't want to comment extensively on it.

The Chair: Mr Lessard.

Mr Lessard: Getting back to the stranded debt and the possibility that that is misjudged, the other option to recover what you've referred to as residual stranded debt is through the competition transition charge. I'm wondering whether by doing that and making this number adjustable, that introduces some uncertainty into the market, and if there is that uncertainty, then how is it that consumers, especially residential consumers, will be expected to benefit from lower rates in the near term and in the longer term?

Dr Purchase: I acknowledge that it does introduce some uncertainty to have an adjustable charge. One would select a particular number for the value of the companies and there would be certainty provided there. In other words, they're not going to continuously change the capital structure of the companies. They're basically out of the loop once that valuation has been determined and implicitly a stranded number has been determined for them.

But in terms of payment of the debt that's now held by the financial holding company, that would be flexible. That does introduce for consumers some uncertainty, but what I would suggest to you is that the uncertainty for customers is one which they benefit from. In other words, unless they were convinced that we would underestimate the value of the stranded debt, it's better for them to put up with the uncertainty, if you like. It's better for them to have the cushion debt. If we've overestimated the stranded debt, we'll reduce the charge rather than trust us to simply have underestimated the stranded debt, in which case they would conceivably get away without having to pay something that they would have otherwise paid.

Mr Lessard: The minister has been consistent in his suggestion that hydro rates are going to go down as a result of this bill, and we've said that we want that commitment put in the legislation. You've explained that you don't think that's a good idea. But let me ask you, after looking at this, whether you feel that rates for residential hydro consumers will go down in the short term, the first three years, and in the long term after that.

Dr Purchase: I have every reason to expect, and this is again just my reading of the situation, that wholesale rates will definitely go down. I think Ontario Hydro, even if it is a dominant market position, will actually act like a competitive market player for reasons that I believe it may fear being broken up and so on and so forth if it doesn't. So there are some disciplines that act on Ontario Hydro other than just the pressure of potential entry of other competitors.

I anticipate that Ontario Hydro might well, as I say, act competitively, and in the short run we'll see short-run marginal cost pricing in an industry that would look like it has excess capacity, which could drive wholesale prices down quite far. For the retail customer, though, then you'd have the stranded debt phenomenon, so we have to add back in. My feeling is that there should be no reason for that to spike up, though, beyond what they would have otherwise paid.

Mr Lessard: You said that the CTC should be non-bypassable. I think that's a good idea. The legislation provides an option to put it on consumers and on generators. The government says it won't go on both. However, it doesn't say that it should be placed on generators from outside the province. It sort of raises the fear to me that there's the possibility that we're actually encouraging generators to produce outside Ontario, hopefully not with dirty coal, and miss having to pay that competition transition charge. Do you think it should cover generators outside Ontario?

1000

Dr Purchase: I don't believe the province has the legal authority to tax a generator outside the province, but it certainly can tax — or charge, if you like, a CTC — any consumption in the province. In other words, wherever it came from, if it was imported from another jurisdiction, it would be picked up by a consumption charge. There's not a concern there. We will be able to get imports and there will be no distortion so that somehow a customer would find it to their benefit to buy from an importer rather than from a domestic utility.

The Chair: On that note, Dr Purchase, thank you very much for coming before the committee this morning. I know there were a number who were anxious to hear what you had to say and we're very pleased you took the time to join us.

INDUSTRIAL GAS USERS ASSOCIATION

The Chair: I now call the Industrial Gas Users Association, please. Good morning and welcome to the committee.

Mr Peter Fournier: My name is Peter Fournier. I am the executive director of the Industrial Gas Users Association. With me is the chairman of IGUA, Mr Alisdair Stark, who has kindly flown up this morning from Sarnia. It was only later, after we agreed to this meeting, that we found out you're going to be in Sarnia tomorrow. So I got the benefit of staying home.

We appreciate very much the opportunity to speak to this committee. IGUA has been active in the government and the OEB's review of the last several years to deregulate the gas market.

The Industrial Gas Users Association is an organization of some 50 companies. We're large users of natural gas and have members with plants in Manitoba, Ontario and Quebec. Forty of our members have plants in Ontario, many with multiple plants. In total, our members consume in Ontario about 115 billion cubic feet of gas a year, which is about 27% of Ontario's industrial market.

IGUA members are mainly involved in the mining, metals refining, chemical, and pulp and paper sectors of industry. Through our current membership drive we're hoping to pick up some of the car companies, some of the Ontario steel plants and some of the refineries.

Principal plant locations of our members are in northern Ontario, and I understand you spoke with some of our members last week in Sudbury. Another concen-

tration is in the southwest corner, down around Sarnia, the chemical area, but we also have members both in the Toronto-Hamilton and eastern Ontario areas.

IGUA's role is to represent its members' interests in proceedings before the Ontario Energy Board, the Régie de l'énergie in Quebec, and before the National Energy Board. Our objective is to obtain for our members flexible access to transportation, fair and reasonable transportation rates, to allow our members to manage their own gas supplies in the most efficient manner possible.

We're a major supporter of the initiative of the government of Ontario and the Ministry of Energy to deregulate the Ontario natural gas marketplace and to foster the restructuring of the gas distribution sector.

In that regard, we believe quite strongly that we're at a very important crossroads in Ontario's energy policies. The restructuring of the providers of natural gas and electricity supplies is causing a fundamental change in how the province's energy market is being served now and in the future.

As large users of natural gas and as important participants in Ontario's economy, IGUA's members are vitally interested in how the restructuring policies are being formulated and implemented. We strongly support the passage of Bill 35 in respect to the provisions of the act relating to the sale, distribution, regulation and consumption of natural gas in Ontario. The reasons for that support are set out in our submission, which I believe you now have copies of. I would note that we take no position on matters in Bill 35 with respect to the regulation of electricity.

I would like to just note that in particular we support the proposed amendment to the Municipal Franchises Act, which is found at schedule D, section 21 of Bill 35, which among other things removes the current prohibition for the selling of gas in Ontario by parties other than the local distribution companies.

IGUA supports the proposed amendments to the Ontario Energy Board Act, and in particular we note that we agree with the provisions of parts I, II, III and IV of that act, and sections 41, 43, 46 and 47, which address some of the areas we've expressed concerns about in detail in our submission.

Finally, we recommend that section 3 and section 113 of the Ontario Energy Board Act be reviewed with the objective of perhaps amending it to more clearly define who is a gas distributor to whom part VIII is intended to apply, part VIII being the powers to allocate gas.

With that, I'll turn to Alisdair, who will give you some background and further detail on our industrial interests.

Mr Alisdair Stark: Good morning. As Peter said, my name is Alisdair Stark. I'm currently the chairman of the Industrial Gas Users Association. My real day-to-day job is purchasing manager of Bayer in Sarnia. We have a large synthetic rubber facility in Sarnia and that's what I do when I'm not flying up to Ottawa.

As Peter mentioned, IGUA has been a very active participant in the OEB's 10-year market review proceedings. We have made submissions to ministry staff recommending certain matters that should be addressed in this legis-

lative process. We've been a member of the OEB natural gas market design task force and currently still are a member.

I would like to take a few minutes of your time to talk to you about some of the issues that are specific to IGUA's industrial members and how Bill 35 addresses these issues.

First off as an issue is the right to resell gas. To maximize our opportunity to manage our natural gas purchases and consumption, industrial gas users must be able to resell, in Ontario as well as outside the province, gas which is in excess to our requirements. Therefore IGUA supports the proposed amendment to the Municipal Franchises Act found at schedule D, section 21 of Bill 35, which removes the current prohibition of selling of gas in Ontario by parties other than the LDCs, the local distribution companies.

The next few issues regard areas that the Ontario Energy Board will need to help out.

The control of upstream transportation: The ability to purchase their gas supplies directly with Alberta suppliers has been important for the economic viability of Ontario's industries over the past 13 years, allowing them to access lower-cost gas supplies than what they would have had to pay if they had had to purchase LDC system gas. As the LDCs move towards vacating the merchant function, that ability to purchase natural gas directly from western Canadian suppliers and transport it to Ontario will not only be standard procedure for industrials but will also be how all of the Ontario market will be served by the aggregators and marketers who are replacing the LDCs in the commercial and residential sectors.

As the LDCs abandon the merchant function, it is probable that they will also cease to offer to transport gas for others under buy/sell and T services. Those who take over responsibility for supplying the Ontario market will want to gain access to the transportation capacity on the TransCanada PipeLines system. This capacity is now held by Union Gas Ltd and the Consumers' Gas Co Ltd. It will bring Canadian gas to Ontario to meet the utilities' own sales and to transport gas for others under buy/sell and T service arrangements.

1010

However, the total TransCanada capacity held by the utilities is less than 100% of their total market peak-day requirements because they've used storage, US-sourced gas supplies and local Ontario gas production to supplement western Canadian supplies. In short, the LDCs do not hold sufficient capacity on TransCanada to provide space to all who will want access to it.

In IGUA's view, as other shippers take over the responsibility to supply the Ontario natural gas market, there must be a process in place to ensure that there will be an orderly assignment of recontracting of utility-held capacity. Specifically with regard to IGUA's members, industrial gas users need to be assured of access to their fair share of utility capacity currently used to service industrial bundled delivery services contracts. IGUA

believes that the Ontario Energy Board should exercise oversight of this reallocation of LDC-held TCPL capacity.

Another issue is the access to storage. IGUA believes that in time the operation of Ontario's natural gas storage facilities can be fully deregulated, that market forces will provide for the appropriate allocation and pricing of storage services. However, in the transition period IGUA believes that it is desirable for the OEB to continue to exercise regulatory oversight of the use of and prices charged for Ontario's storage facilities. This will ensure that all sectors of the Ontario gas market which rely on storage to meet seasonal and peak-day requirements have full and fair access to the LDC-controlled storage caverns.

Another issue which we want to talk about is the licensing of marketers. As previously noted, IGUA has sought to have the prohibition on direct sales in Ontario lifted in order that industrial end-users may resell their excess gas supplies. At the same time, notwithstanding the prohibition on gas sales by parties other than the LDCs, it is a fact that for several years various agents, brokers and marketers — we refer to them as ABMs — have been active in Ontario selling gas to the end-users in the residential and commercial markets.

IGUA has been aware of the public discussions of the need to protect the public from certain less than scrupulous practices by some marketers and has noted the suggestions that some form of licensing regime be established to permit the licensing authority to disenfranchise marketers who do not meet practice standards. IGUA has sought to have industrial end-users who periodically seek to resell excess gas supplies excluded from any requirement to be licensed, provided that they did not sell their excess gas to residential or commercial consumers. Industrial gas users who seek to resell excess gas supplies would do so only to other industrials or sell into the wholesale market. They would not sell to residential or small commercial customers. Licensing of industrial gas users would be, in IGUA's submission, unnecessary for the protection of the low-volume consumer and would be an administrative burden on industrials.

IGUA believes that the proposed amendments to the Ontario Energy Board Act provide the OEB with the powers to deal appropriately with the matters I've just discussed.

Therefore, IGUA supports the proposed amendments to the Ontario Energy Board Act. IGUA notes and agrees with the provisions of parts I, II, III and IV, and in particular with the provisions of sections 41, 43, 46 and 47.

The last issue I'd like to talk to you about is the proposed powers for gas priorities and allocation. IGUA believes that this part of the act is intended to apply only to distributors of gas; that is, to regulated public utilities who carry on the business of delivering natural gas to consumers, and in that regard suggests that the definition of "gas distributor" contained in section 3 and that of "distributor" contained in section 113 be amended to remove any ambiguity, to ensure that parties such as

industrial buyers of gas are not swept up into being made subject to the provisions of part VIII.

Therefore, IGUA recommends that sections 3 and 113 of the Ontario Energy Board Act be amended to more clearly define the "gas distributor" and "distributor" to whom part VIII is intended to apply.

We're almost there.

In closing, IGUA's support for the legislative change package is directly linked the desire of its members to be able to acquire and manage gas supplies in the most flexible, cost-efficient manner possible. The existence today of impediments to the open buying and selling of direct purchase gas supplies frustrates that desire. IGUA understands that the legislative changes embodied in Bill 35, insofar as they relate to natural gas, will address the concerns that we have described in our submission.

IGUA wishes to thank the standing committee on resources development for this opportunity to submit comments on Bill 35.

The Chair: Thank you very much. We have four minutes for questions from each caucus. We begin with the Liberal caucus.

Mr Alex Cullen (Ottawa West): The first question I have: Is Ontario Hydro a member of your association? It's a big natural gas consumer.

Mr Fournier: No.

Mr Cullen: Secondly, you were very silent at the start by saying you have no position on electrical regulation. But I would think that the natural gas system that we have, with lots of private competition, would be used as a model. How come you're not advancing it?

Mr Fournier: There's a separate organization I'm sure you're aware of, and had a submission from, the Association of Major Power Consumers in Ontario, AMPCO. Many of our members are members of AMPCO. We have a very defined, clear, narrow scope of responsibility and we're just sticking to gas.

Mr Cullen: Thank you for your input.

Mr Lessard: I take it from your submission that you are in agreement that there needs to be regulation and licensing requirements for marketers, at least for residential consumers, of not only gas but electricity as well, and that those licensing requirements be included in the legislation. Am I correct in that?

Mr Fournier: Correct.

Mr Lessard: The concern you've expressed is that you shouldn't have to get a licence in order to be able to resell natural gas. I'm wondering what sort of restrictions you might want to put on that sort of an exemption, because we wouldn't want to permit you to get into the gas marketing business to smaller industrial users, I guess, and those smaller industrial users may not feel as though they're being fairly dealt with. They may be subject to the same concerns currently that small residential consumers have about door-to-door gas marketers.

Mr Fournier: I think the language in section 46 of the proposed Ontario Energy Board Act covers that concern. It limits the definition of a gas marketer as a person who is a seller to a low-volume customer. If indeed Bayer or any

of our members wanted to turn around and make a sale to a residential customer, then yes, they should be subject to licensing to protect that residential small-volume customer.

We don't make that kind of sale. We'll sell to another factory down the road or to a marketer, if we have some excess gas. But if, by remote chance, one of our companies wanted to get into that retail end of it, then yes, they should be subject to the same code of licensing that any other seller into the residential market is subject to.

1020

Mr Lessard: So your question is, what is a low-volume purchaser?

Mr Fournier: I think that's adequately defined in here and we're quite satisfied with that definition and then with the exclusion of the large-volume industrial seller from the provisions of licensing.

Mr Lessard: Do any of your members have their own storage facilities?

Mr Fournier: Some of them contract with storage. They don't hold their own storage, they contract now with Union or with Consumers' Gas. The two major storage areas, I'm sure you're aware, are at Don, owned by Union Gas, and Tecumseh, owned by Consumers' Gas.

Mr Lessard: Are your members interested in having their own storage facilities, or is it important to ensure that access to storage facilities and the ownership are kept separate from large consumers?

Mr Fournier: The concern is to have access to storage, to manage your gas consumption, and it's always been that way. This is a service currently provided by the utilities, and as they back out of the merchant function, who will pick up this ball and carry it? To manage your gas supplies, there are days during the year when you have peak demand, say 100 units. Most of the year you might only need on an average day 80 units and you wouldn't contract for 100 units year-round because you're paying for 20 units for say 300 days of the year that you don't need that 20 units; you only need the 80 as a base core. One way to meet those days when you need an extra 20 units is to put some gas into storage and then draw it out on those days when you need it. That's easily done down in southwestern Ontario where they're close to the storage facilities but very, very difficult in northern Ontario, difficult here in eastern Ontario, because you then get into transportation and delivery problems.

Mr Hastings: Thank you, gentlemen, for coming in and appearing before the committee. While it's not explicitly stated in your submission, I'd be very interested in knowing, since we're all talking about the benefits of significant change coming out of the Energy Competition Act and since I see you're trying to go after new membership, grow new membership in the automotive parts and other areas of the economy, have you folks ever had any general or specific discussions regarding job retention/job creation in the respective member companies you have in your organization?

I can see with respect to the pulp and paper sector that it would be primarily a job retention exercise since there is

significant consolidation going on in that industry. Could you give us some realistic assessment or conservative estimates as to the number of jobs that could be created or retained in the particular sectors of the companies you have in your organization, either company-specific without naming it or by sector?

Mr Stark: I don't believe that we have any numbers. What we're pushing for here is the continuing deregulation of natural gas as a commodity. The main deregulation occurred in the mid-1980s and we see the need to continue that and change the last few remaining issues that need to be changed.

I can make a comment from Bayer's point of view, and that is that we have just recently completed one but are in the process of completing a second new plant in Sarnia. So we're adding two new production facilities. I mentioned earlier that our plant was primarily synthetic rubber. Bayer is bringing two unique processes to Sarnia to produce tungsten, tungsten carbide and nickel hydroxide, and one of the major reasons that Bayer AG in Germany decided to locate in Sarnia was the energy costs that we were able to maintain in Sarnia compared with other Bayer facilities throughout the world. So in order to compete worldwide, we need the ability to maintain and lower those energy costs and we see that the continued deregulation of natural gas will be able to do that for us.

Mr Hastings: How many jobs will be created with the new facility, Mr Stark? Do you have any idea at this point?

Mr Stark: I'm not sure of the number.

Mrs Johns: You talked a little bit about section 8 and, as I understand section 8 in the act, it's identical to the current wording in the Ontario Energy Board Act and it's never been invoked because it's there in case there's a gas shortage and there needs to be some assistance to the consumer. What exactly would you like to see as changes in that section? You have trouble with the definition of "distributor" in that section, I think is what you've said.

Mr Fournier: That's correct. It's part VIII of schedule B that I was referring to, and the definition of "distributor" in section 113 reads, "a person who supplies gas to a consumer." If I'm selling gas to an industrial, he is a consumer. I would prefer to see a closer alignment to the same kind of definition you have used to define who a marketer is, and that's a very low-volume consumer or whatever. In theory here, Ontario Hydro is a consumer or a very large cogen plant is a consumer, as is a large factory. Our concern is that there is not use of this part of the act to confiscate or take gas for which an industry has legitimately bought the contract to run its business and to give it to somebody else.

Mrs Johns: But if there's a gas shortage, which is the only time this section would be proclaimed, would it not be fair to say that both industrial and residential consumers would deserve the protection because it's obviously a very unusual time, and that we in fact are just protecting all the people by the way part VIII is worded?

Mr Fournier: If there was an emergency of such magnitude that you had to start cutting into firm industrial

purchases, we're in a pretty major problem. Most or a great deal of industrial gas is purchased as interruptible, and that would automatically, if there were a shortage, be interrupted in any event.

Mrs Johns: So if it's interruptible in any event, what's the concern? If we could interrupt it anyway and we're trying to protect those industrial and retail customers, I guess I would like you to consider that and maybe come back to us with some wording you would like to see that may meet your needs.

Mr Fournier: I'd be pleased to do that.

The Chair: That concludes our time. Thank you very much for coming before the committee this morning. We appreciate your giving us your advice on this section.

PUBLIC INTEREST ADVOCACY CENTRE

The Chair: We're now calling on representatives from the Public Interest Advocacy Centre, please. Good morning and welcome to the committee. Please make yourself comfortable.

Mr Michael Janigan: Thank you very much. My name is Michael Janigan. I am the executive director of an organization known as the Public Interest Advocacy Centre. The Public Interest Advocacy Centre is based in Ottawa and I'm very appreciative of the opportunity to address the committee today in Ottawa. It is a non-profit organization that provides legal and research services on behalf of consumer interests and, in particular, vulnerable consumer interests concerning the provision of important public services.

Since the inception of the centre in 1976, the regulation of public utilities such as telecommunications and energy has been an important focus of the centre's work. PIAC has been a frequent intervenor, generally on behalf of low-income customers, in proceedings before the Ontario Energy Board, both with respect to rates and policies for natural gas local distribution companies and in the former periodic reviews of different aspects of the Ontario Hydro operation. We participated fully in the OEB proceedings that produced the report recommending the legislative changes in the gas industry that has provided the policy basis for the portions of this bill that deal with the natural gas industry.

030

PIAC has also published extensive reports in utility fields and frequently provides policy reports to the federal Department of Industry on consumer-related concerns. We have appended as the last page of our speaking notes a partial list of some of the utility publications to this document.

By way of general comment upon Bill 35, we would state that the government appears to be proceeding in a prudent fashion, given the relatively large stakes involved in the management of the transition to a more competitive energy industry. Getting from where we were to where we will end up is by no means a straightforward proposition. The management of the change will play a key role in the economic future of all stakeholders. As we will discuss

later in this submission, it is vitally important that the superintending authority possess the ability to fashion effective consumer protection and market failure remedies when the need arises.

In energy, we do not have the luxury to wait for long-term market correction based on economic theory in the event that serious impairment arises to threaten energy access and affordability. It should also be recognized that this bill deals with two industries, gas and electricity, with wholly different historical profiles in terms of meaningful regulation, public accountability and effectiveness.

The natural gas industry has carried out its monopoly operations pursuant to real scrutiny by an informed and effective regulator, the OEB, with authority to review performance and compliance. Ontario Hydro, on the other hand, has not had a similar experience, and its lack of meaningful accountability has given rise to many of the problems that beset it today. Public satisfaction with the historical performance of the natural gas industry is relatively high. There is little clamour for change among natural gas residential consumers. In electricity, on the other hand, there has been a demonstrable need for change that is apparent to all informed stakeholders.

However, little can be gained at this juncture by a recitation of the past sins of Ontario Hydro. When discussing the treatment of utilities, it is always a risky proposition to quote from former British Prime Minister Margaret Thatcher. However, I believe that her statement, "If we spend our present debating the past, we will find that we have forfeited our future," has particular resonance with many of the tasks concerning the management of the electrical industry that is before us in this bill.

We cannot make the monkey of stranded cost disappear from the backs of the Ontario Hydro customer. We can only ensure that there is equitable treatment of these costs so that the burden of these costs are fairly allocated and no market participant is able to avoid contribution by opting out.

We have organized our comments on this bill under the general headings of "Benefits," "Protections" and "Unknowns." The limitations of time prevent a lengthier discussion of many of the points raised in each of the above-noted categories, but I trust that other presenters may be addressing them.

Benefits: We see potential benefits accruing to all consumers from the following features or effects of Bill 35.

(1) The separation of Ontario Hydro's generation assets and the restructuring of the transmission and distribution system should encourage better accountability of individual system components and reduce cross-subsidies among system components. As well, the elimination of vertical integration should help attenuate market power.

(2) The introduction of competition into the electricity sector, given adequate supervision to maintain service and quality standards, should serve to introduce new efficiencies into the generation and distribution system that should help to reduce operating costs.

(3) In the natural gas sector, the removal of regulatory barriers to gas sales may enable the expansion of competitive delivery of other components of the current system delivered in a monopoly mode. Once again, this increases possibilities for the elimination of cross-subsidies and inefficiencies currently costed to gas delivery.

(4) The provisions requiring licensing of gas marketers, with proper enforcement, should address the ongoing problem of consumer deception or improper conduct in the solicitation and delivery of commodity to customers.

(5) The monopoly components of Ontario Hydro's transmission system will finally be subject to cost-of-service regulation and ongoing scrutiny will take place to ensure conformance with OEB directives.

Protections:

(1) Proper enforcement of the licensing provisions links a code of conduct for marketers and retailers with their ability to stay in business. This provides a powerful incentive to avoid customer-abusive behaviour.

(2) Contracts entered into with an unlicensed marketer cannot be enforced against the user, diminishing the prospect of hit-and-run sales by rogue operators with an eventual assignment of contracts to an established player.

(3) The OEB must approve the distribution rates to be charged by the successor corporations to the MEUs. In addition, the distributor has an obligation to supply customers in the distribution area, providing security of access for consumers.

(4) Any transfer of over 20% of the assets of a distribution system is subject to OEB approval, presumably to protect customers in the serving area from improvident transactions.

(5) The new distribution corporations set up by the municipal utility must separate monopoly and competitive businesses. This provides some insurance against cross-subsidization.

There are many of unknowns:

(1) The successful fostering of competition will result in the loss of market share by the generation company, Genco. Such market share loss may impact on the payments to be made to the Financial Corp for the retirement of the debt. In turn, this may increase the size of the stream of revenue required from all market participants through the levy to recover for stranded debt. This makes it, of course, difficult to capture competition benefits for consumers achieved in the electricity generation sector.

(2) Will municipal taxpayers be subject to greater risks by the activities of the municipal commodity corporations? There will be differing levels of expertise and buying power in the new commodity acquisition corporations owned by the MEUs. If a new corporation is not able to outbuy the market or even acquire competitively priced electricity, the separation from the local transmission business may buffer customers but not local taxpayers from losses by the municipally owned commodity business that might be incurred. As well, there may have to be a workably competitive market in place for retail in order for the end-use customers to be protected in this circumstance.

(3) Will there be other competitive sources of power generation to produce a workably competitive market, or are we simply fostering a competitive resale market?

(4) We are creating a retail market for commodities that the ordinary citizen has little experience in buying. The initial experience with door-to-door natural gas sales has been a cautionary tale. Healthy competition depends on the communication of straightforward, unbiased information to establish a market of informed consumers, to mandate transparency in the details of the retail transaction and to ensure swift and effective enforcement of rules of marketplace conduct. Will there be adequate resources provided for these tasks, and how will they be provided? Consumer and competitive concerns militate for strong provisions incorporated into the licensing regime to ensure customer mobility and ease of comparison with rival services as well as confidence in the ability of the licensed marketers to deliver their product. There must be proactive oversight with the resources to ensure that the job gets done.

(5) The necessity to put in place transmission rates for January 1999 should not prevent a cost-of-service review of the monopoly elements of Ontario Hydro, particularly before any performance-based regulation is put in place. Will current management be successful again in evading regulatory scrutiny because of time constraints?

(6) There are differences in the licensing system set up for electricity and that set up for gas. What will be the effect of such differences upon the retailing of the energy commodity, for example?

By way of conclusion, I want to touch to some extent upon the experience the organization has had in competition and telecommunications. We've been actively engaged in the regulatory and governmental process in this decade that has attempted to establish the framework for competition in telecommunications in Canada. The telecommunications experience with competition to date is in some ways instructive to the current task in energy and in other respects is not particularly helpful.

1040

In telecommunications it was necessary to reprice network access to facilitate competitive entry into long-distance markets. This meant a two-fold to three-fold increase in basic rates, despite the initial CRTC finding in the 1992 seminal competition proceeding that such increases were not inevitable. Similar to the energy market, the revenues from long-distance service were disproportionately produced from the high-volume users. One third of all Bell Canada accounts in 1994 produced two thirds of the long-distance revenue. The CRTC generally left it to market forces both to establish an informed consumer market and to police the many resellers that sprang up to sell long distance offerings to compete with the former incumbent monopolist.

As a result, the higher-volume user was largely the market target for discounts. Consumers were bombarded with a confusing array of advertising and some customers were slammed on to services they had not authorized. By the beginning of 1998, most telephone customers were

paying higher total telephone bills despite the industry hoopla.

There also continue to exist indicia of the former monopoly in the form of market power exercised by the incumbent local telephone companies. Up to this year, for example, Bell Canada was able to retain close to a 90% share in the residential long-distance market, despite the fact that its RealPlus savings plan had call amount minimums that exceeded the monthly long-distance bills of a majority of its residential customers. This meant that most customers were not receiving any benefits from competition. This year there finally appeared discounts for ordinary callers available with Bell, and there appears to be an expanded interest in low-volume customers by most long-distance players. The lion's share of competition benefits, however, still remain with the high-volume user.

However, this pattern should not be repeated in energy. Simply put, energy customers in Ontario will not countenance a doubling or tripling of their energy rates and wait six years for some real benefits to appear, no matter what advertising program accompanies the changes. As well, there will be much less tolerance for unscrupulous operators in the energy field as the consequences of misconduct in false representations, slamming and inability to deliver are more serious. As one commentator has stated, "You can't have a busy signal when you turn on the light switch."

The telecommunications industry has been saved from widespread public outcry about market misconduct in part by the fact that the players themselves are absorbing the transactional costs of customer transfer. This is to encourage customer mobility. Because of the arbitrage nature of competitive commodity offerings in the energy field, long-term locked-in energy contracts with customers are the desirable norm for marketers. This makes it difficult to effect market corrections without regulatory intervention, both to police misconduct and to ensure workable competition in an informed consumer market.

Similar to telecommunications, there will likely be attempts to wring concessions for high-volume users, with accompanying threats to exit the system if the rates are not designed to recover more costs from smaller users. As well, competition theorists are likely to be frustrated by the maddening tendency on the part of private market participants to maximize the bottom line, in the form of cream skimming, service reductions and mergers and acquisitions, rather than financing competitive entry, as they are supposed to be doing.

A good example of this has arisen in the United States under the new Telecommunications Act of 1996. The expectation of the legislators in passing that act was that what we would see is the competitive entry by different telecommunications players in each other's business. Unfortunately, when they examined this situation, they noted that it's probably better to acquire another player than it is to go out and compete with them. Hence we have AT&T acquiring TCI cable rather than competing as a cable provider in its own right.

This is simply the private market responding to what is the most sensible for their shareholders, but in terms of what may be the most sensible for all telecommunications users you may need to revisit that idea that full competition is going to provide consumer protection, particularly in the cable field now, where rates have increased at four times the rate of inflation and we're still waiting for competitive entry from the telephone companies in any sort of realistic way.

In our view, Bill 35 seems to have a framework of remedies in place to address the above-noted problems. This returns to the central theme of our presentation. The evolution of a genuinely competitive market for energy will initially require more regulatory vigilance, not less. In the case of Ontario Hydro, we are starting close to regulatory ground zero. The statutory provisions of this bill create the licensing regime and establish effective OEB superintendence over the process, and these are vital to the smooth transition to competition as well as the operation of the industry to the benefit of the entire public interest.

Finally, just briefly in closing, I have had the opportunity of speaking with my colleague Bob Warren from the Consumers' Association of Canada, and I would echo his views with respect to section 29 and the potential expansions of the cost awards proceedings to include not simply the formal proceedings but also the processes by which the Ontario Energy Board and the industry examine the different issues that come before it.

Our experience in telecommunications has been that frequently the meetings that have been held between the different stakeholders and consumers on different issues associated with particular local competition have been best served in an informal procedure, in workshops and discussion groups that have been ongoing over a period of time. Certainly it would be our view that that should be encouraged rather than discouraged and, accordingly, the amendment could add the possibility of full participation by public interest groups in any process that is short of a formal proceeding.

I'd be happy to entertain any questions.

The Chair: Thank you very much. We have four minutes for each caucus for questioning, beginning with the NDP caucus.

Mr Lessard: Thank you very much for your presentation, Mr Janigan. I appreciate the work that your organization has done, especially with respect to telecommunications and the transference of that knowledge and experience into the new energy market. I have the benefit of benefiting from the wisdom of one of your board members, Howard Pawley, in Windsor on a regular basis, so that gives me a good idea of the quality of the people you have in your organization.

One of the most troubling aspects of Bill 35 to me is the risk that residential consumers may be exposed to. Although the government likes to tout the benefits of competition in the electricity market, and of course they give us this assurance that price is going to go down, my overwhelming fear is that there are some people for whom

that will be true but that residential customers may be faced with increasing electricity rates.

You have given a good example of that; in fact, Mr Osborne from Ontario Hydro used the telecommunications example in his submission to us as to the benefits competition brings for consumers. But you have told us very clearly here that, by and large, residential consumers didn't benefit through lower rates from the deregulation of the telecommunications business. However, you don't really make any suggestions for changes to the legislation here. You say you're hopeful that the mechanisms exist in this legislation to try and avoid that, but I want to make sure that there are some teeth in this legislation to make sure that all consumers benefit from lower electricity rates that this government is promising.

Mr Janigan: I think it will be difficult, at least in the short term, to deliver on any particular promise of cheaper rates, but I think we have to look at the process as an evolutionary one where we're starting with a completely unsatisfactory example of public accountability in Ontario Hydro and attempting to move to something that may provide benefits in the long term, introduce efficiencies and possibly protect consumers.

I look at the provisions in the new act that enable the OEB to scrutinize the rates that are offered by MEUs to, to some extent, force amalgamations, to increase the buying power in the commodity corporations and to generally superintend the process as being sufficiently protective, at least at first blush, of the interests of low-income consumers. I think it's essential that the regulatory scrutiny is there to make sure that there is no ability in behind-the-scenes arrangements for large-volume consumers to wring out concessions that do not pass under regulatory scrutiny and do not meet the standard cost allocation tests, and I think that's our principal concern in the process.

1050

I think you are right. There is no guarantee at the end of the day that there will be cheaper electricity for consumers, at least in the short term. I think it's a question of attempting to design a system that takes advantage of some of the benefits of competition, in particular the breaking up of the vertical integration of Ontario Hydro, which we think is a favourable element, and as well to ensure that there is a strong regulatory authority to police that transition.

I would add that in terms of telecommunications I don't think I would go as far as to say that there are no benefits that have accrued to consumers through competition. I would say that the benefits have been unequally distributed, and some of that failure is in part attributable to the fact that there has not been more aggressive regulatory intervention in the form of a balloting procedure that might have assisted the establishment of a more knowledgeable consumer market and prevented the ability of the former monopolist to exercise market power.

Mrs Johns: Thank you very much for your presentation. I certainly appreciated the format and some of the strong comments you have given us on the successes of the bill.

I'm interested in your unknowns. In section 2 you are talking about the municipal commodity corporations. It's certainly a concern to us that we get the best deal we can for the ratepayers in the province. This bill is primarily about trying to protect the consumer, and at the same time flow through advantages to the consumer that could come by this marketplace. You talk about the municipal electric utility or the board that would run this not necessarily having the expertise to be able to deliver the product, ie, purchase of economies of scale, that kind of thing. As a consumer I don't have to stay with that municipal electric utility if they can't provide those services to me. I can stay with them because they're the default supplier if I so wish, if I don't want to make informed decisions or move forward, but I can also move. Does that not protect the consumer? I guess that's what I'm interested in delving into with you in this time.

Mr Janigan: Yes, and as I indicated, consumers might be buffered. In the event that there is a workably competitive retail market, they can move elsewhere. The problem exists, of course, of the Orange county syndrome, where your municipal corporation has gone off and speculated in highly risky derivatives and thought, "We're going to go out and outbuy the market." The market was smarter than they were, and they're stuck with rather substantial losses. So the citizen of that municipality as a consumer may be protected by the retail market, but as a taxpayer he may be saddled with some additional burden somewhere along the line.

Mrs Johns: That's a good point. So should we put in under the Ontario Energy Board Act that there should be some restrictions on what kind of activities the municipality can enter into?

Mr Janigan: I think it would be difficult. Some of this will be captured in the ability of the OEB to superintend with a view to in effect forcing amalgamations among the smaller players to ensure that there is sufficient expertise and buying power so that the circumstance doesn't exist. But it is an additional risk. I can't fashion off the top of my head a statutory remedy that will be in keeping with the spirit of the act at the same time as providing some protection to municipal taxpayers.

Mrs Johns: What I think I heard you say there was that in the licensing agreement we should make sure that each of the groups that applies for a licence has expertise, but that's basically as far as you think we should go in the legislation?

Mr Janigan: I think there will be some questions, for example, if Ailsa Craig, with 68 customers, comes forward and says they want to have a commodity company to buy electricity. In that circumstance, I think it's quite clear that they won't be allowed to do it.

The problem exists in the smaller and middle-level municipalities where there may have been some expertise in the past, but the risk of exposure, given the size of the municipality, may be great. I don't know. Off the top of my head, I can't suggest a statutory remedy in that circumstance, but I think it's something that should be examined.

Mr Cullen: I want to continue walking down this road because you've made it very clear in your presentation that we're starting close to regulatory ground zero. The parliamentary assistant has said, "Can't we rely on the operation of the market?" and you're saying, "Not quite." We seem to have touched on hearings dealing with licensing. The other question is we have two models to look at. We're evolving. In terms of regulation, we've seen what's happened to natural gas and we've seen what's happened to telephone. Are you suggesting perhaps local rate hearings? Are there other mechanisms consumers can use to protect themselves in the situation of deregulation in electricity here?

Mr Janigan: Certainly the monopoly elements of Ontario Hydro will be subject to real regulation for the first time. That's principally where we believe there will be accountability and some savings wrung from the system if they go through with a genuine cost-of-service process before the Ontario Energy Board.

Mr Cullen: Who's going to ensure that happens? Do we rely on individual customers? Do we rely on the government? Do we rely on hearings where various parties, such as yourself, present themselves? What's the mechanism to ensure that happens?

Mr Janigan: The OEB will police those monopoly elements of the system the same way they police the LDCs, for example, where they tell them, "Look, you have to come in now for a rates application this year," or "We want to hear this." I think it will be done in that same fashion. What disturbs us is we hear some rumblings in the background from Ontario Hydro: "January 1999 is coming up. Let's put some rates in place. Oh, by the way, can we also have performance-based regulations so that we don't really ever have to have genuine cost-of-service scrutiny over these elements?" We're very concerned that here finally be some effective review of Ontario Hydro.

Mr Cullen: And at the local scene?

Mr Janigan: It's also envisioned that the transmission rates the new successor corporations to the MEUs will be charged will be scrutinized. I'm not quite certain of the fashion in which that is done.

Mr Cullen: Are you looking at a model like the CRTC where consumer groups would come forward and say: We challenge these assumptions on the transmission rates. We challenge the assumptions on the contribution to our stranded debt that is now affecting these costing calculations?"

Mr Janigan: The OEB's own rules of practices and procedures will be sufficient to ensure this occurs, that they're given the regulatory authority over that.

The Chair: On behalf of all the members of the committee, I thank you for coming before us this morning with your perspective. We appreciate your advice.

Mrs Johns: Point of clarification, Madam Chair: With respect to Mr Cullen's question, section 75 of the Ontario Energy Board Act gives the ability to the Ontario Energy Board to be able to grant a licence or to refuse a licence even some of the constraints you were talking about.

1100

OTTAWA HYDRO

The Chair: We call now representatives of Ottawa Hydro, please. Good morning. Glad you're able to join us. Please make yourselves comfortable.

Mr Carl Kropp: My name is Carl Kropp. Before I introduce myself, I want to introduce the chair of Ottawa Hydro, Dyan Cross. In respect to Carl Kropp, who is he? You've got copies of my CV that have been provided to the clerk. I'd like to emphasize two points in that CV. One is that I'm the general manager and chief engineer of Ottawa Hydro. I've held that position now for 14 years. Second, as you can probably tell from the colour of my hair, or the lack thereof, I've been in the utility business for some 40 years.

I reviewed the submissions made to this committee last week. I'm pleased to discover that our submission is going to be a little bit different from what you've heard. Only the first page is really devoted to the philosophical issues. You heard a lot about that last week. I'm sure you'll find that a bit of a relief. The remainder deals with operational concerns, which in my view are not getting adequate coverage in front of this committee. I think there are some operational concerns in here that you ought to be thinking about, so I'm pleased to be able to bring some of these to your attention.

Finally, I intend to finish with a very important point, which will bring together a philosophical concern, as well as an operational concern. Against that background, I proceed with the Ottawa Hydro paper.

Ottawa Hydro was founded in 1915 and presently has some 140,000 customers, which makes us the third-largest utility in the province. We are proud to be recognized as a benchmark utility. Details about Ottawa Hydro are provided in appendix A. This presentation has been reviewed by the commission and has their support.

Ottawa Hydro applauds the government's intention to introduce competition and choice into the electricity utility business in Ontario. Accordingly, we appreciate this opportunity to appear before the standing committee on resources development to publicly express this support. We have some concerns with the enabling legislation, Bill 35, the Energy Competition Act, 1998. Hopefully, by bringing these concerns to your attention we will help you to improve the quality of Bill 35.

First, three important issues of a general nature: We are concerned that the purpose of achieving low-cost and reliable electrical energy is not entrenched in the legislation along with the seven other purposes stated in section 1. I believe this is a most important aspect in respect to the customer and ought to be included as the eighth purpose, but ought to be included in the first position because it respects the customers' interests and wishes.

Second, we are concerned that by maintaining one large, market-dominating generator the potential for low rates may not be realized.

Third, we are concerned that by not creating separate transmission and distribution companies, favouritism and cross-subsidization may result.

These are some of the issues which we understand will be further developed in the submission of the Municipal Electric Association and we state them here simply to indicate our support.

Based on my 35 years of experience with Ottawa Hydro, I wish to focus on some special operational concerns inherent in Bill 35. I'll start with the Electricity Act, 1998, and I will read the section and subsection number with the marginal comments in respect of what it relates to and then I'll give you our view.

Subsection 25(4), "Previous contracts with municipal corporation": Included in appendix B are copies of our "Application and Contract for Electrical Service" and "Water Heater Rental Agreement." You will note that the conditions generally relate to the wires or hardware part of the business. These conditions must survive the transition to the new order, otherwise there will be chaos. A similar situation exists in respect to two wheeling contracts over our wires. In other words, there are contracts and there are contracts.

The legislation, or possibly the regulations, must provide for the continuation of the wires and/or hardware requirements of the municipal electric utility through the transition phase. During the subsequent phase, the Ontario Energy Board may wish to specify standard terms and conditions, or at least general guidelines, within which the wires company of the municipal electric utility must operate in fulfilling its obligation to connect every customer.

Subsections 27(a) and 27(b), "Distributor's obligation to connect": Where no line exists, it seems clear that the municipal electric utility may collect a contribution for the extension of a line to the property, possibly subject to guidelines of the Ontario Energy Board. However, Ottawa Hydro, like many other utilities, operates two primary voltages. The lower voltage supplies smaller loads and the higher voltage the larger loads. Should a building require the higher voltage and only the lower voltage be present, it is suggested that the extension of the higher voltage line be treated in the same way as the case where no line exists. In other words, the use of the word "line" in the legislation is really not very specific in terms of what goes on in our industry and I think you might want to have a look at that particular usage, because it could lead to some confusion.

In the existing order, such line extension charges could be recovered, in part at least, through development charges should the municipality and the municipal electric utility wish. In the new order, there is no longer an opportunity to recover these costs through development charges. Thus new line extension charges and the extension of the required voltage ought to be put on the same footing.

Subsection 27(b): As presently worded, an occupant may insist on a connection notwithstanding any objections of the owner. As such, the possibility for conflict is

obvious, as is the likelihood of court action. It is suggested that the consent of the owner be made a necessary condition for the connection.

Next are sections 28 and 29, which deal with "Distributor's obligation to sell electricity" and "Termination of service."

Section 27, which we just dealt with, requires the municipal electric utility to connect and section 28 requires the municipal electric utility to sell, albeit in the roll of default supplier. Section 29 permits disconnection in the case of non-payment. This is really not unlike the present system except that the municipal electric utility is now the default supplier. But there is nothing in the legislation that allows the municipal electric utility to establish the credit worthiness of the customer as presently exists in section 30, tax-rolling, and section 49, security deposit, of the Public Utilities Act.

About half of Ottawa Hydro's 140,000 customers own their property and the other half are tenants, so we're in a good position to comment on this particular aspect of security.

In respect to credit worthiness, I believe the following is instructive. In the past year 410 accounts of property owners were tax-rolled because of non-payment, in the amount of \$122,000. As such, eventual payment is generally assured.

The case of tenants is a little more troublesome. Bad debts for non-payment of electricity accounts in our service territory were escalating out of control. Late in 1996 the commission instituted a deposit policy for customers who do not establish their credit worthiness. It was seen as unfair that those customers who faithfully paid their electricity account were financing customers who did not pay.

The results of this deposit policy are rather dramatic and are depicted on the graph in front of you, which shows a steady increase in the amount of dollars sent for collection, culminating in 1996 at about \$900,000. You'll see that in 1998, after just over a year of deposit policies, that amount has fallen by some 50%, to maybe \$500,000. So there has been a dramatic decrease in terms of capturing delinquent accounts.

There is still a concern here, as 20% of that money that is sent for collection is ever recovered; the other 80% is not. So it's important to be able to establish the credit worthiness of a customer.

In summary, in addition to the obligation then to connect and to be a default supplier and the right to disconnect, the legislation must continue to allow the municipal electric utility to tax-roll and to collect security deposits from customers who do not establish their credit worthiness. Recommendation 4-8 in the second interim report of the Market Design Committee also recognizes and speaks to this particular problem.

Finally, in subsection 29(2), reasonable notice is stated and I suggest that any time you talk about reasonable notice, it has to be defined; otherwise it will be defined by the courts at an unnecessary expense. I suggest that be given some definition.

Subsection 30(2) is examples of market rules. I think there are some interesting observations here. This section empowers the Independent Market Operator to deal with system emergencies. It does not cover emergencies which may occur at the local level. For example, a local distribution substation transformer failure may limit the amount of power available. Normally, such situations would be dealt with under the authority of the Public Utilities Act, section 20, which deals with the allocation and distribution of available power. That section has always allowed us, for example, to go into rotational load-shedding in the event that there is not enough electricity to go around for whatever the reason might be.

But schedule D of Bill 35 removes electrical power and energy from the domain of the Public Utilities Act, so one is led to conclude that the Public Utilities Act is really no longer applicable. Curiously, schedule D of Bill 35 goes on to revise section 20 of the Public Utilities Act to substitute Ontario Hydro by its successors, the Ontario Electricity Generation Corp and the Ontario Electric Services Corp.

I say this begs the question, does the Public Utilities Act continue to apply or does it not? If it doesn't, why are you bothering to revise it? If it does apply, then the municipal utility can only allocate the distribution of power available from the Ontario Hydro successor companies. But with the advent of retail competition, the distribution wires will carry the electricity of other suppliers. No authority is given to allocate this electricity.

In conclusion, in an emergency, the municipal utility must be clearly given the authority to allocate the distribution of available power, regardless of who supplies it.

Also, as appendix D goes on to include other revisions of the Public Utilities Act, it seems advisable to simply remove these sections from the Public Utilities Act as it no longer applies to electrical power and energy. But again, does it or doesn't it? There seems to be a question.

110

Next is section 44, "Affixing signs": Back in 1993 the Supreme Court of Canada took a decision in respect of affixing signs to hydro poles. It is known as *Peterborough v. Ramsden*. The court found that the particular citizen had the right to affix signs to hydro poles but that the municipality could set some conditions on the fixing of those signs, such as the size of the sign and the length of the sign that could be there.

The act here imposes a \$200 penalty for anybody who affixes a sign to a hydro pole. I suggest you might want to have your legislators check into the impact of the Supreme Court of Canada decision on that particular clause because I think it's probably not legal.

Subsection 79(4), "Competition transition charge: generators." Existing municipal-owned generation has never been a part of the stranded debt issue and ought in my view therefore to be excluded from any charge payable to the Financial Corp.

The next section, 145, on transfer bylaw and other matters: This section implies that there is no limit on what municipal councils may specify. Surely the articles of

incorporation under the Business Corporations Act, the transfer bylaw as otherwise specified under Bill 35 and any shareholders' agreement are adequate instruments. Accordingly this section, I believe, ought to be removed. It is redundant.

Next we turn to the Ontario Energy Board Act, 1998, and I start off with subsection 69(10). In any given area, there ought to be only one distributor that should be licensed. I believe this is the intent of the legislation but it's not said. As presently worded, there is really no indication of exclusivity and I suspect the board, if they wanted to, could create two licensees. You could have a pole line on both sides of the street, which we used to have in Ottawa, by the way, up until 1950, when Ottawa Hydro bought out Ottawa Light, Heat and Power. I think there ought to be an exclusive licence given in any area and the board ought to be adequately directed by the legislation.

"Municipally owned distributors": I'm talking about subsection 72(1). The language in paragraphs 3, 4 and 5 is rather vague but seems to imply that we really can only be involved in the electricity business. In any case, a narrow interpretation could be very limiting. A broad interpretation could be more permissive. As such, conflict is inevitable. I suggest that more precise language implying the broad interpretation is suggested. I'm going to comment a little further on that in my closing remarks.

We have to construct an electricity line. That's subsection 91(1). The language is so inclusive that even minor work will require leave from the board. The volume of the paperwork and the obvious delays will be unbearable for the customer and the utility. Possibly in the regulations, as a minimum, a threshold value should be set for board approval.

In my previous life, before coming to Ottawa Hydro, I worked in Quebec where there was a regulated electricity system prior to Hydro-Quebec and we dealt with a board that you had to submit your various works to. I really would suggest that some care is required. Unless you exclude a certain number of all these minor things that a utility does on a daily basis, you're going to bog down the whole system with paperwork and you're going to drive the customer crazy waiting for approvals to come from the board. Some care is required here and minimum values have to be set below which you can operate.

Now a final concern: I really didn't know whether to put this at the beginning to emphasize its importance or leave it till the end to emphasize its importance. I chose to leave it till the end, but it is an extremely important issue, one that I feel very strongly about and that I hope the committee will deliberate on.

Section 72 of the Ontario Energy Board Act, 1998, clearly limits the municipal utility to the electricity business. But to best serve the needs of the customer, municipal councils ought to be permitted in a straightforward manner to establish a municipal energy utility selling electricity, natural gas, hot and chilled water and so forth. Such a utility would be able to offer energy solutions to the customer from an unbiased position. No

such restrictions apply to possible competition, so we automatically have an unlevel playing field here.

Concerning the Consumers' Gas purchase of Cornwall Electric, Mr Perry Stover, director of utility ventures for Consumers' Gas, stated, "We're looking at opportunities for synergy between gas and electricity."

Perhaps more significantly, a western Canadian municipal utility — I underline the word "municipal" utility here — is partnering with a local institution to install cogeneration and sell electricity and thermal energy. This legislation purports to get out from under some of the restrictions in that respect, but the profits are going to flow outside Ontario unless we do something about that.

A number of opportunities for us in Ottawa to partner in the energy business have been put on hold because of the limitations of the existing legislation, and Bill 35 does little to improve that situation. It is not at all clear why a council would have to sell off more than 50% of the electricity business to get out from under some of the restrictions of Bill 35. So not only is the playing field warped, but unnecessary requirements are imposed on municipal councils.

An energy utility is the way of the future, there's no question about that in my mind, and Bill 35 must be revised to make this option available to Ontario municipal utilities.

That concludes the paper. I thank you for your attention. We would be pleased to take any questions you might have.

The Chair: Thank you very much. We have four minutes for each caucus, beginning with the government caucus.

Mr Gilchrist: Thank you, Mr Kropp. I appreciate your submissions. In fact, let me say, while many of your points are somewhat technical or involve legalese, you prove the merits of having committee hearings because I think you've brought more different issues to our attention in one brief than perhaps entire days' worth of submissions that we've had so far.

I would like to touch on a couple of your broad concerns that you glossed over at the outset, because I think staff will certainly take all of your other submissions. You've raised some very valid points, but I think we've got a philosophical issue we have to deal with.

One that is most disconcerting is the issue of the pricing of assets and the potential sale back and forth between Genco or a utility. I would like to explore it very briefly if we can here today. If you had \$10,000 in debt to a bank and you only had one asset, a car that you thought was worth \$5,000, would you agree with me that if you sold that car, you would have \$5,000 worth of stranded debt?

Mr Kropp: I would probably think so, yes.

Mr Gilchrist: If you sold the car for less than what you thought it was worth, your stranded debt would increase. Correct? On the other hand, if, when you put a want ad, you had five or six people clamouring for it, you might be very pleasantly surprised and get \$6,000 or \$7,000. Your stranded debt is less.

When you buy and sell assets, as the local utility, do you do that on the basis of the fair market or would you expect either your supplier or purchaser, depending on the direction, to take a bath just because of accounting?

Mr Kropp: I don't think it's as simple as buying and selling a car.

Mr Gilchrist: Why isn't it? Why wouldn't a generating station be worth whatever a generating station generates as income, the value that would have, no different than any other business asset you and I might buy?

Mr Kropp: If I were selling Ottawa Hydro assets to a third party, I would go at market value, but I'm cautious here of a situation where you want to buy Ontario Hydro rural assets, where the customer has already paid for them, in part.

Mr Gilchrist: How is that different than if you sell a generator that you've paid for with Ottawa?

Mr Kropp: Because the benefits of that will flow to Ottawa Hydro, won't they?

Mr Gilchrist: Why would the same argument not apply to Ontario Hydro shareholders, the taxpayers of Ontario?

Mr Kropp: Because the Ontario Hydro rural customer has already paid down some of the costs associated with that distribution line.

Mr Gilchrist: So has Ottawa Hydro. You tell me you're debt-free, so every asset you own has been paid down by your shareholders, namely, your ratepayers.

Mr Kropp: That's right.

Mr Gilchrist: Why is that any different, philosophically, from the treatment that Ontario Hydro's assets should receive? I think we have an incredible contradiction here.

Utilities are telling us that just because of some artificial book entry, they deserve to get a deal. But on the flip side, you've just testified here that if you were to turn around and resell those assets the next day, you'd expect to get market value. How do I reconcile that?

Mr Kropp: I'm not asking for a deal.

1120

Mr Gilchrist: That's what book value is. It's an artificial book entry based on depreciation rates that may or may not have anything to do with the real marketplace. Why wouldn't you expect to pay, MEUs in general, what an asset is worth?

Mr Kropp: If that's what the market has to be, that's what the market has to be, but recognize that there's a windfall profit going to somebody then.

Mr Gilchrist: Ah, but the profit in this case goes against that 40% of the hydro bill that's going to pay debt. No one has suggested that if Hydro was to sell all of its assets it would come out of this with a profit. It would have less of a stranded debt. But again, the same people that you're serving every day, the taxpayers in this part of Ontario, would have that tradeoff. They would still save money.

Mr Kropp: I agree. It's a possibility for a windfall profit. For example, if you buy the rural system and you pay market value, there is money beyond what the

customer has already paid. OK? So where's the windfall profit go? It's going to go to pay down the stranded debt. I think that's a political decision. Do you want to saddle the people in the rural community with, having paid off part of the system, now you get a market value thing and you use that to pay down some of the stranded debt? I don't know. If both systems work, it's not a business decision, it's a political decision.

Mr Gilchrist: You'd agree with me on the flip side, the stranded debt would be a bill on all taxpayers?

The Chair: Sorry, we must move on to the official opposition.

Mr Kropp: It's a political decision, I think, really.

Mr Conway: Thank you, Mr Kropp. I really appreciate, as do I think all committee members, the very specific and detailed, almost line-by-line analysis of the problem areas and the strengths of the bill.

Just to pick up on the last exchange, one of the concerns I have is that in the last 15, 18 months, because of the political decision around a rate freeze for the five-year period between 1995 and 2000 — and who could be opposed to that? — the board of directors of Ontario has parked over \$8 billion worth of losses, only a very small portion of which is now reflected in our rates.

So the people who are going to be running Genco — because, you know, it's been broadly advertised in this committee, people are waving around bills and saying all of this debt is reflected in your current rate. It isn't. One of the reasons it isn't is that the board of directors of Ontario Hydro in the last 18 months has taken two writedowns totalling over \$8.2 billion. The vast majority of that debt, as I understand it, is parked on a siding, to be determined. So that's a determination that I, as a residential customer, would really like to know more about.

My question to you is two-fold. One, you're the third largest municipal utility in the province but you also have a very substantial internal generation capacity. I think you say in your brief 12,000 —

Mr Kropp: Twelve megs.

Mr Conway: I've been hearing from some others that there is some concern about the impacts of the policy as a whole on municipal utilities that own and operate their own generation. You cite 79(4), the requirement that until the stranded debt is paid off, you're going to have to make a charge on the basis of that generation to help with that obligation. Is that the only area where the policy affects your generation capacity? If it isn't, could you add others, and if it is the only area, just help me understand again why you should be exempt, because we heard some of this in northern Ontario last week.

Mr Kropp: I believe that the existing generation is grandfathered. The last point I make actually talks as well to how I think the ability of the municipal utility to expand its area of influence into being an energy company would have impact on the area of generation. For example, we may want to get into thermal energy distribution. The obvious way to do that, the economical way, is cogeneration, which means we would have to bring more cogeneration into the system.

Specifically to your question why we ought not to pay a transition charge on existing generation, no money has ever been borrowed against the existing generation by Ontario Hydro. It's not really part of the problem, never has been. We didn't put it in to displace Ontario Hydro generation. In fact, this generation predates the formation of Ontario Hydro. It dates from 1899 and 1901, so it's really never been part of the problem.

Mr Conway: A second question has to do with Servco. I want you to just forget for a moment your involvement with Ontario Hydro because your resumé is pretty impressive. You've been around this business a long time, one of the few people probably to present to us who's been around long enough to work for private power in the pre-Hydro-Quebec days, if my memory about Gatineau Power in the late 1950s is correct.

Mr Kropp: That's right.

Mr Conway: Looking at southern Ontario, one of the areas where I would have expected and I still do expect a very substantial rationalization on the distribution side is southern Ontario. I would have thought prior to Mr Osborne's testimony last week that what we would get in the main would be substantially enlarged MEUs in southern Ontario. I'm not at all sure that's the plan of Servco after Mr Osborne's quite dramatic testimony about eat or be eaten. He intends to go to the lunch table and not be eaten.

What is your considered opinion after 35 years of experience in this business? What should the design of the distribution system look like in southern Ontario, taking into account that there's a lot of moose pasture between Bell's Corners and Kaladar, for example?

Mr Kropp: I'd love to have lunch with Osborne and see who comes out paying the bill. I want to point out that Ottawa Hydro has a very low gross margin, slightly less than 9%, one of the lowest in the province. I challenge Ontario Hydro or Osborne to compete with us any particular time.

Specifically referring to southern Ontario, I think some amalgamation of utilities makes sense.

Mr Conway: And aggressive expansion of Ontario Hydro retail in southern Ontario?

Mr Kropp: No. I would hope that the utilities would amalgamate and get together and displace Ontario Hydro retail. Bill 35 does not make that as easy as one might think. There's a Catch-22 in Bill 35. I might just outline that to you.

Bill 35 makes it much easier for the municipal utility to be privatized and that could bring some of them together. Let's suppose you have three utilities roughly the same size that want to come together in the consolidation proposal of Bill 35. Say one of them wants to privatize and two do not. If they come together as one utility, the one will only have a third of the voting power and would lose its position. The flip side of that is also the case.

Unless the utilities have a like mind, they may want not to come together, so I think you have to have a look at that particular aspect of the bill. It won't necessarily promote utilities to come together. It will promote utilities that have

a like mind to come together, the like mind being whether they want to be a public utility or a private utility.

Mr Lessard: Thank you very much for your presentation. I want to give the parliamentary assistant an opportunity to answer your question about whether the Public Utilities Act applies or not. I hope that she takes that opportunity.

The benefits that the government holds up from Bill 35 are two: the possibility of reduced rates and the creation of jobs. If I heard you right, in your presentation you mention the concern that job creation may take place someplace other than in Ontario. Was I right when I heard that?

Mr Kropp: No. I said that job creation, for example, would take place in Ontario but the profits may go outside the province unless you allow municipal utilities to compete on a real level playing field with our competition and not limit us only to electricity. Allow us to go into the thermal energy business and whatever our councils might decide they want us to go into.

Mr Lessard: Would you be able to continue your water heater rental business under this act, do you think?

Mr Kropp: I would suspect so. Yes, I would say so. The deliberations of the Market Design Committee make it quite unclear where that business may end up, but I believe it will end up with one of the successors to Ottawa Hydro.

Mr Lessard: You mentioned other areas of energy that you'd like to get into as well, and you mentioned the possibility of amalgamations between various utilities. What would happen in the event that between those utilities that may decide they want to amalgamate and they do have a like mind, there is some area that's currently served by Ontario Hydro? What happens if Ontario Hydro is in the middle?

Mr Kropp: I believe they would want to acquire the assets of Ontario Hydro, and depending on how that solution was taken, the discussion I just had with Mr Gilchrist, that would have to be bought either at market value or at book value. Again, I think that's a political decision on which way you want to go on that.

The Chair: Thank you very much for coming before the committee. As was stated, you do have some unique ideas that I'm sure our committee will carefully consider in this bill.

1130

Mrs Johns: Madam Chair, I have two points of clarification. The public utilities have two years to transform to the Ontario Business Corporations Act, and in those two years the Public Utilities Act applies as it is now. After that time they come under the new legislation.

The second thing is that the Public Utilities Act makes it easier to amalgamate than privatize. The reason I say that is because of the transfer tax that's imposed. In the bill, if they sell more than 20% there's a transfer tax on it, so it makes it difficult to privatize or not as lucrative to privatize.

MUNICIPAL ELECTRIC UTILITIES OF RENFREW COUNTY

The Chair: I now call upon representatives of the Ottawa Valley Power Corp study committee. Good morning and welcome to the committee.

Mr Ron Lowe: Madam Chairperson, members of the standing committee on resources development, my name is Ron Lowe. The gentlemen who are with me today are from utilities that are within Renfrew county: from Arnprior, Rick Farrell; from Pembroke, Murray Moore; from Renfrew, Tom Freemark. These gentlemen will answer any questions that you may have after our presentation.

When you were talking about meat and eating people up here, I got kind of nervous because I'm such a small person. I hope you leave me enough that I can get out of here.

My goal in these few minutes today is to share with you the concerns we face in rural Renfrew county. Let me take you away from those worries of Bay Street and big industry and along the back roads to a farm in Horton township or into a home in the village of Calabogie. What will Bill 35 mean to the people we serve in Renfrew county?

As I said, I represent nine municipal electric utilities in our county, and together over the past few months we have prepared a plan for amalgamation. Our goal is to find the best possible means to serve our customers, the people who have owned our utilities ever since they began. As local utilities, we've always been directly responsible to our customers. They vote for our commissions and we have to put their interests and protection above all else.

Let me present you a graphic symbol of the changes we are afraid our customers could face if they were to lose that local, responsive service we've developed over the years. I think you're all probably aware of it or have seen it in the paper. It has a story it tells by itself: "If you've been getting a busy signal...we're sorry."

Let me ask you: If you were standing in the dark in a cold house on a winter's night and your power had been out for over an hour, would you be satisfied with this response?

Accountability: That's what it's all about. We're providing a service that's essential. We need a reliable supply of electricity for big business, for an average family, and for a dairy farmer living on the fourth line of Bromley township back home in Renfrew county.

The legislation you're reviewing needs to protect the locally developed, regionally based service groups providing electricity throughout Ontario. If the ice storm of last February taught us anything, it's that we have to be available and ready to serve our customers and communicate with them not just in a time of crisis, but all the time.

Another major concern for us is cost. We've worked hard through the years to be responsible service providers. We've kept our debts to a minimum and our customer's cost as low as possible. There are parts of Bill 35 that could destroy all that hard work and send electrical bills in rural Ontario through the roof.

Let me give you an example. Let's suppose that the customers in the town of Petawawa want to leave Ontario Hydro and join our amalgamated utilities of Renfrew county. As paying customers, they've already made a huge investment in the infrastructure that delivers their power. It would be unfair to expect them to abandon that investment and begin all over again. It is crucial that this legislation be clear: Assets, whether they're owned by Ontario Hydro or another supplier, must remain with the customer when there is a transfer to a new utility.

I've already mentioned the responsible management of debt that goes hand in hand with the locally owned, accountable municipal utility. It is with great fear that we face a future saddled with huge debts accumulated by Ontario Hydro over the years. Again, we must protect the interest of the customer. A fair system of recovery must be developed that will not leave the doors open for a tax grab that protects big business at the expense of the individual homeowners and farmers who live in our part of the province.

At this point I will go to some of the highlighted areas that we have in our written presentation to you.

Page 2: We strongly feel that the new local utilities should operate independently of municipal governments. We believe the proposed legislation could be unnecessarily restrictive in terms of development and rationalization of a distribution system of shoulder-to-shoulder utilities.

Page 3: We have a number of concerns regarding the management of Ontario Hydro's current debt load. The structuring of Ontario Hydro's debt is not sufficiently addressed in the proposed legislation.

Bill 35 assigns authority to the provincial finance minister for determining the stranded debt. We agree with the MEA position that the level of Ontario Hydro's unassigned debt should be determined by the Ontario Energy Board. Further, we must stress that all charges dedicated to stranded debt recovery should be eliminated once full recovery is achieved.

Page 4: The existing municipal generating facilities should not be subject to the competition transition charge. We propose that the assets of the existing municipal electric generation facilities be transferred to a new corporation.

Ownership of meters and the responsibilities for billing, metering and the customer database have not been addressed in Bill 35.

Ontario Hydro generation facilities should be further separated into provincial public corporations with stakeholder representation, including local utilities, on the boards of directors.

We must emphasize the need to separate Ontario Electric Services Corp further.

Page 5: Section 28 of the Electricity Act states that a distributor has the obligation to sell electricity as a supplier of last resort, meaning that the distributor must provide electricity for consumers not purchasing power from any other retailer. This section of the legislation also creates an obligation for the distributor to provide elec-

tricity for customers who have purchased power from other retailers in the event that the retailer is unable for any reason to sell electricity to that customer. Given the nature of demand and supply, this power may have to be purchased by the distributor at a premium rate. This will be an unfair burden to the innocent customers caught in a situation beyond their control and outside our ability to maximize their savings. We believe it is the local retail affiliate that should have the responsibility of suppliers of last resort.

1140

Page 6: Section 91 of the Ontario Energy Board Act states: "No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the board an order granting leave" to do so. This section needs clarification, as there are a number of questions raised by the current wording. Approval should not be required for an extension of a street or subdivision in a utility service area. We believe municipal electric utilities will require an exemption to this regulation in order to carry on with routine business in a cost-effective manner.

We face some rather unique challenges in Renfrew county. With large tracts of crown land, you can travel through miles of forest between settlements and even between individual properties. As suppliers of electricity, we need a broad customer base to allow us to service the more costly remote areas of our county. We need a level playing field in order to survive in a world of competition. We recognize that our world is changing and we are ready to do business in a new competitive market, but I am here today to remind you that there are very different and very real challenges when it comes to servicing rural Ontario.

Please, as you review the legislation and make recommendations on the new structure for electrical generation and services in Ontario, keep these basic questions in mind: Will it cost less? Will it benefit the consumer? Or will it cost more? Will it bankrupt the consumer? That's our bottom line as we continue to work on behalf of the residential, agricultural and business customers of Renfrew county.

Our detailed concerns and recommendations are outlined in the written brief we've submitted to your committee. My goal today was to give you our rural perspective on the future as it could appear under Bill 35.

Before I go, I'll make one last proposal. The members of our committee convey their thanks for this opportunity to have input. We will finish by offering our further participation as Ontario's new electrical system develops. We would be happy to volunteer for any pilot projects or other opportunities to be full partners in this process.

The Chair: We have five minutes for questions and answers for each caucus. We'll begin with the Liberal caucus.

Mr Conway: Thank you, gentlemen. I have to be careful here lest I be seen to be engaging in what Pierre Genest used to call a sweetheart cross-examination.

Interjection.

Mr Conway: Well, don't assume it, because I've got a couple of questions here.

Clearly there is a problem in our part of the world about the deterioration in service from Ontario Hydro. You've all been around this business longer than I have. Would it be a fair characterization to say, Ron and colleagues, that in the last five to 10 years there has been a steady decline in the capacity of the regional and district offices of Ontario Hydro to respond to the service needs of people in and around the areas you people serve?

Mr Lowe: I would have to say that in some cases there has been a great deterioration. I guess the biggest one is the example we have shown you here today.

Mr Conway: How angry are people you hear about in the Pembroke-Renfrew-Arnprior areas about the kind of service responses they're getting? I've offered some advice to the committee, but I want a candid assessment. It's an open question to anyone on the panel.

Mr Lowe: At one time it was nice to be able to walk out and say you were associated with Hydro. Now when you walk into the farming community you're a little more careful of what you say. I'll leave it at that.

Mr Conway: I take it that one of the issues — and we've talked about this before — is that there is a very real, ongoing problem with this centralized communications network that the provincial utility has established. Is that a fair assessment, Mr Moore?

Mr Murray Moore: I'm glad you looked at me. In our office we have about two to three calls a week, and that's minimum; that's without a problem.

Mr Conway: And your office is?

Mr Moore: Pembroke. People are just absolutely beyond themselves in trying to get through to Ontario Hydro's one-call centre. It's just not working, and it's a good example of what happens when you turn around and you lose local accountability. You hit on that before, when they closed the local offices and went to a central location for billing etc. I'm sorry. It's just not acceptable to the rural customers and they're really having a very hard time accepting that.

Mr Conway: Let me ask another question. I think it's fair to say that in the committee there's a sense that there are going to have to be rationalizations at the distribution end, and you people have obviously worked out the beginnings of an arrangement for the rural, small-town, small-city Ottawa Valley.

But let me ask you this. Surely if you look at the area we come from, there are two realities. There's what I call the Highway 17 reality, running 160 kilometres from the town of Arnprior to beyond the town of Deep River, along which about 60% or 70% of the population in your communities is concentrated. But then there's that vast interior of what we used to call in geography the Frontenac axis, that great swath of east-central Ontario that goes from Eganville across to Lakefield, from Kaladar up to the southern boundary of Algonquin Park, a hell of a lot of territory, much of which is owned by Her Majesty, and the population scattered lightly through all of it.

Do you really want to take a good chunk of that on as part of your regional utility and, if so, how do you propose to manage what might look to some like high costs and maybe not a great revenue stream?

Mr Tom Freemark: That's mine? In our proposal here we have nine utilities looking together, and how we came together was that we were going to keep local offices. Having come from industry, there's a cost involved with that. Because of our local accountability and the idea that the customer owns us, we feel that these costs should be in the system, that we'll have to bear these costs.

Mr Conway: They are commercially bearable in the model that you're looking at?

Mr Freemark: Yes, our original study to the white paper. In defence, we haven't taken now whatever the costs are to get the rural assets. We have no idea, we have nothing to bear that on, but the principle here is that people do not want to phone Markham. They don't want to get a busy signal. They want to be able to talk. People can talk to any of the managers; any of our customers can talk to us directly. We don't have somebody in between putting them away, and we think it's important because electricity is such an important commodity to people in Renfrew county.

Are we crazy? No. We're Renfrew county; we'll look after Renfrew county. We'll take it on. If we're given the right economic situation here, we'll take it on, and that's what we're asking for consideration.

1150

Mr Lessard: Electricity isn't vital just in Renfrew county; it's vital to the very economy of Ontario. It's one of those essential services that I can hardly imagine living without these days, although I know that people at one time were able to.

I wanted to start where you ended up, and that was, will the changes that are contemplated in Bill 35 cost less and will they benefit the consumer? I think you probably have some opinion about that, and I'm interested in knowing what it is.

Mr Lowe: I believe that, yes, it will benefit the consumer provided that the legislation as it comes down is designed in a way that is fair to the consumer. If the assets travel with the customer, then I think that, yes, it is feasible. If you expect us to pay twice for those assets, then no, definitely it will not work. But if the assets travel with the consumer, then yes, I believe it will be profitable for us.

Mr Lessard: I guess, following up on that, there needs to be a level playing field as well. You've made some suggestions in this legislation about things that need to be changed in order for that to take place, and one of them was to ensure that this provision about the contracts between Ontario Hydro and MEUs before the legislation are null and void and that that provision should be extended to other contracts as well. You've mentioned a number of them in here. I would like to have you elaborate on that and the impact of either having contracts that you've

signed not become null and void or for that provision to not apply equally to other types of contracts.

Mr Rick Farrell: We are concerned with the speculators and brokers who are signing up some of our customers there now. We should all start off at the same spot and that people are committed. It might be putting some of our customers at a disadvantage if they're signed up with a marketer now.

Mr Gilchrist: You two have raised a number of concerns, some of them unique. I would just like to deal with a couple, if I can.

One of the first ones you talked about was the need for flexibility in how you select your board members. I just want to assure you that there would be no problem, if you choose to have an election, to then provide council with the names to submit for board representation. That would be an acceptable means of doing so. There is certainly no restriction on how you go about deriving the slate of directors.

Perhaps less supportive comments on your suggestions on section 86(4) about the need to eliminate the charges in that section at such time as the stranded debt is repaid, because if you look at the start of that section, that deals with municipal and school taxes.

You ended your presentation by saying you're very concerned that there be a level playing field. Is it your submission here today that in that level playing field, a private company that comes in would have to pay property taxes but the new corporation set up to replace the utility shouldn't? Is that level?

You get the tough ones, eh?

Mr Moore: They give me the tough ones.

I think I could refer to something which Ottawa mentioned this morning, and that is that you don't need two wires companies in the same locality. We are out here to give the customer of Ontario the lowest possible cost, and we see a lot of things in this legislation which are going to increase the cost of electricity to the customer and camouflage possibly tax revenue underneath nothing else but electricity rates.

Mr Gilchrist: Right now, 40% of what you pay Hydro — you, not the customer — is servicing of debt, and that doesn't change. The passing of this bill doesn't change the fact that you and I and everybody else in Ontario owes those billions of dollars because we've guaranteed Ontario Hydro's debt. So no matter how you slice that pie, the debt is still there, but it doesn't get any bigger. I'm always intrigued that people think somehow cutting that pie into a different shape raises the price. Perhaps if after today if you could supply a mathematical example, I'd be intrigued to see it, because so far, after six days of hearings, not one person has been able to posit a scenario where that would be the case.

My question concerns property taxes in general, because that's what that section is. Don't restrict your answer or your thoughts, please, to wires, because you have a lot of other things. If I build a cogeneration plant with a step transformer and service a couple of industrial

customers, I'm going to be paying property taxes on all those assets. Why shouldn't the new corporation —

Mr Moore: As the municipal utilities do now. We pay grants in lieu.

Mr Gilchrist: And that's what this section says. Right now everything you pay is going to go to service the debt. After the debt is paid off, you're going to continue to pay it to the municipality, not the government of Ontario. So why are you raising that as a concern in your brief? Do you not believe that what you're doing today should continue on after the stranded debt is paid off?

Mr Freemark: Maybe I need a clarification. Wasn't it the difference that carries on? Maybe I've got it wrong. I know we have payments in lieu of. Was it the difference that carries on afterwards?

Mr Gilchrist: That's right.

Mr Freemark: Why does the difference carry on? Why can't we stay the way we are now, presuming we're paying proper —

Mr Gilchrist: Because, quite frankly, it's providing that level playing field that you suggested earlier. An outside entrant is going to be paying a certain cost, and this bill anticipates that everyone who is in that business, in any aspect of distribution, would be required to pay the municipality after the stranded debt is retired, so I think it's quite fair to anticipate that. I think wearing your current municipal hats, or the relationship you have, it's somewhat intriguing that you wouldn't see that the same taxpayers/ratepayers are going to be, to some extent, not inconvenienced at all. It may go from one pocket to another, but it stays in that same local community.

Mr Farrell: I guess from the point of view of a small utility, although we're all in favour of good deals for the customer, some of us run very close to the bone in small utilities, and any incremental cost will have to be reflected in short-term rate increases if we can't come up with any other efficiencies.

Mr Gilchrist: Again, I'd just like to remind you that it's not incremental. You're paying the stranded debt.

Mr Farrell: That's right.

Mr Gilchrist: So that's a cost that's there today. When that cost is replaced by property taxes, let's call it, in the future, it's not incremental. It's exactly the same amount of money. Quite frankly, the municipalities at that point would have the choice, if they want, to lower the property tax rate with the flexibility we've given you with the recent changes to the property tax legislation. If the municipality wants to then cut the price it charges all utilities, it can do that in the future to reflect that increased revenue. So I think that one is perhaps not a particularly legitimate concern, but I certainly appreciate the others you've raised, and we'll take them back to staff for further consideration.

Mr Lowe: Are you saying that once the taxes have been completed and the municipality takes over, we are going to be — that in an amalgamation of municipalities, the ones that are in those utilities are going to be helping support the ones that are not in utilities that are coming into the amalgamation process? What I'm saying is, if you

have four municipalities that are joining — you have two municipalities that have utilities; you have two municipalities that are under Ontario Hydro. Once this is completed, the ratepayers of the existing utilities are then going to be paying — one's going to have a benefit over the other, are they not?

Mr Gilchrist: No, because in theory everybody's getting electricity from somebody, and if you lower the cost to whoever their provider is, whether it's Servco or your local utility, obviously a lower cost can translate into a lower cost to the customer.

The Chair: Excuse me. I'm sorry. This is a conversation that I think should go on, but not at this particular point in time because I'm very cognizant of the fact that we have to be back and in committee here at 1 o'clock.

On that note, I'm going to thank you very much for coming before us today. You raise some interesting questions that I know our committee members are going to be carefully considering. Thank you very much.

Colleagues, we will recess to reconvene here at 1 o'clock.

The committee recessed from 1159 to 1302.

The Chair: Good afternoon, colleagues. Before we begin with our first presenter I would like to welcome Mr Lalonde, who is joining us for a brief time this afternoon. We're very glad you were able to come in.

Mrs Johns: Madam Chair, on a point of clarification: In one of the presentations this morning, they suggested as an MEU they were going to have to obtain the power or else they would have to make decisions about how they turned on and off power in specific places. I'd like to suggest that under subsection 4(1), clauses (c) and (d), the IMO's responsibility is to make sure that the power supply is guaranteed.

The Chair: Do you know which group that was?

Mrs Johns: The last one, Ottawa Valley.

The Chair: Thank you for that.

SIERRA CLUB OF CANADA

The Chair: Now I'd like to call the representative from the Sierra Club of Canada, the national office, please.

Good afternoon and welcome. If you would just begin by introducing yourselves, as I think you're about to do, and your position if you wish. You have 30 minutes for presentation time.

Mr John Bennett: Good afternoon, Madam Chair and members of the committee. My name is John Bennett. I'm the director of atmosphere and energy for the Sierra Club of Canada. My associate today is Paul Gregory. He's the youth climate change campaigner for the Sierra Club of Canada. He is part of our ongoing commitment to the training of our youth for the future.

The title of our presentation today is Making the Energy Competition Act Work for Our Health, Our Environment and Our Economy. The Sierra Club of Canada sees the changes you're contemplating as a real opportunity to take Ontario from the hard path of pollution

and nuclear waste to the soft path of renewable energies, conservation and efficiency and to do it through competition that's fair and just.

My resumé is not included in the presentation, but just to put it in context, 20 years ago I was involved with the Ontario Non-Nuclear Network as the Greenpeace Canada nuclear campaigner, at which time I participated in the Porter hearings on electrical generation. In the 1980s and early 1990s, I was Greenpeace Canada's climate change campaigner and energy campaigner, and until 1995 I was the project coordinator for Belleville Green Check, which was a green community initiative of the Ontario government. I also spent about 18 years working as a reporter, 10 of them in Dr Galt's riding in Northumberland county.

Mr Galt: We won't hold that against you.

Mr Bennett: I don't hold it against you either. I got to know Howard Sheppard a lot better than I did you, because I was gone by the time you came along.

The first point I would like to make is that during the last 20 years of my involvement in energy and electricity matters in Ontario, what we have seen is successive Ontario governments from all three parties that listened for their advice on electrical generation and energy, from Ontario Hydro, from the Ministry of Energy and from the industry consultants. For us they're all part of the same group, and I think they have been giving you bad advice all those 20 years.

It was 20 years ago that I gave my first public presentation on electricity in Ontario, and it was to the public library in Burlington, Ontario. I was doing a flip chart on the Darlington power plant, and when I got to the page which said, "Ontario Hydro estimates the cost of Darlington will be \$3.6 billion, but we think it will be \$5.6 billion," two Ontario Hydro employees who had come to monitor my presentation — they came to all of them, by the way — leaped to their feet and said: "You're a liar. You're misleading these people." I think it's quite evident who was wrong and who was right about what nuclear power costs Ontario. We're faced with a mess. You have an opportunity to clear up the mess, and we'd like to give you some general guidance on how to do it and protect our environment and our health at the same time.

To do that, we'd like you to take a holistic approach. We have a mess with Ontario Hydro that needs to be fixed, but we have a lot of other messes that need to be fixed and we can fix them at the same time. The list of those includes climate change, and this is the major concern of my career at this point in time, but it should be yours as well considering what happened to this city and the rest of this part of the province and a great deal of Quebec in January. The ice storm that happened is the kind of event that you can expect to happen more and more often in Ontario and across the world if we don't do something to reduce our CO₂ emissions. That cost \$1 billion, just a 35th of Ontario Hydro's debt, but it could happen over and over again, so when you're thinking about to change how we sell and produce electricity in Ontario, think about how we can prevent those things from happening in the future. There's also a real health cost. I

have included an appendix in the presentation on what those health costs might be in the future as the climate changes, as new diseases emerge in Ontario that haven't been here before.

Third, the federal government and the provinces are now involved in an elongated negotiation process which may end up in new laws and regulations that may impact the electricity market in Ontario. This is the time to anticipate those changes and put them in as part of the Energy Competition Act now.

The second area is air pollution. I know you have already been told this a number of times, but 1,800 people in Ontario die premature deaths every year from air pollution, hundreds of thousands become sick, tens of thousands are sent to the hospital, and the OMA estimates it costs us, you and me, between \$400 million and \$1.5 billion. We should be dealing with that problem as well.

The third problem is nuclear power. Nuclear power likes to maintain that it's a nice, clean, safe form of energy, but we all know that it's not, and even when it's running safely, our power plants are releasing tritium constantly. It's going into the environment. That's a cost and a problem that we have to face. We have to face what we're going to do with those plants when we finally decommission them. What are we going to do with all that high-level radioactive waste that's going to be dangerous and threatening to us for 200,000 years? We should be looking at an opportunity to get away from that kind of power generation system in the future. I'll make a recommendation about how to do that in a moment.

310 The next point I want to raise is how we price the electricity in the future. Do we price the electricity just at the operating cost of a coal plant? Or do we say: "We now there are a lot of associated costs that go on with the production of electricity. All those costs should be involved"? Today, coal-fired power plants are allowed to use our lungs as a waste dump. I don't remember them ever offering to pay me for that or hold an environmental assessment on my lungs or anyone else's lungs in order to operate and burn coal. The cost to Ontario, as I said earlier, is close to \$1 billion a year. That cost should be reflected in the price. If it's not, then the coal-burning providers are going to be subsidized in a hidden and sneaky way; some would say even worse than sneaky. That price should be involved.

With nuclear power plants, all the costs incurred in building those plants, in rebuilding those plants, in fixing those plants and in burning coal when they were shut down should be attributed to those plants and the price of electricity coming from those plants should be attributed completely. There are other items as well. Those power plants don't pay the same cost of insurance that a private producer would pay. The federal government guarantees their insurance. All the costs of producing power from a nuclear power plant should be included.

When you look at renewables coming on stream in the future, they're going to have to pay their entire costs. They won't have those negative downstream costs but their

price may come in a little bit higher. It will appear to be more to consumers when in fact it won't be, because consumers will be picking up the bills from other pockets.

The next point is to talk about security of supply. Today we have a small number but some of the largest power plants in the world. Just imagine what happens when a pinprick is found in a pipe at Pickering. We lose 2,000 megawatts and suddenly we have to fire up a coal-fired plant in order to replace that power. If there's a major weather event we could lose the main delivery line, say, from Bruce. If the ice storm had happened a few hundred kilometres to the west, we could have lost the main delivery line from the Bruce. That could have isolated not only the towns that were down from the power source but we wouldn't have been able to get the power out of the plant. That could affect us.

Second, when you have large plants, you have large, dependent workforces in particular areas. If we were to move to renewables, those plants could be spread across the province into 20 and 30 and 40 job markets so that we'd have a more diffuse market in terms of where it was coming from and be more secure. In the long run, we'd be better off to have more small plants that would be secure in supply.

As my final point I'd like to mention that we need full disclosure. Every person has a right to know what damage they're doing to the environment when they turn on their lights. We know that with that information, there will be some parts of the population that will use that information and act. We don't think it will significantly affect the sales of electricity but, in the short term, it's a good way to get started in making sure that we have an informed public.

That brings me to the recommendations that are contained in the report:

(1) That the Ontario Energy Board be instructed through legislation to promote the development of non-polluting, environmentally benign technologies as well as aggressive conservation and energy efficiency measures by requiring electricity suppliers to provide gradually increasing percentages of electricity from renewable sources and to maintain aggressive demand management programs;

(2) That all health, environmental, property damage, insurance, current debt and other real costs associated with power production must be incorporated in the price to the consumer;

(3) That the Ontario Energy Board should be instructed through legislation to move Ontario's electricity supply system from fossil fuels and nuclear energy to sustainable, renewable supplies of sources located throughout the province;

(4) Suppliers must be required by law to list the generation sources and a description of the impact of emissions and other potential environmental implications on monthly bills — for example, their carbon dioxide, nitrous oxide, VOCs, sulphur dioxide, tritium and waste products, including nuclear waste generated.

That concludes the presentation part. I'll be glad to answer questions.

The Chair: Thank you very much. We have four minutes for each caucus for questioning beginning with the NDP.

Mr Lessard: Thank you very much for your presentation, in which you pose the question, is this like the long jump or the 100-metre dash? You say that it's more like the long jump. We as legislators think that it's more like a giant leap of faith that we're being asked to take, even more than a long jump. When the government says to us that we're going to have lower rates and we're going to have a cleaner environment as a result of Bill 35, I'm somewhat skeptical that that will be the result.

One of the things that concerns me is that although it's a stated objective that we improve energy efficiency, really in Bill 35 there is more of an incentive, in a competitive environment, for people to come into Ontario to sell more power. There really isn't much of an incentive to become more energy-efficient. If you let the market make those determinations, energy efficiency will only be achieved if the price rises, but the government says they want the price to go down. My question is, how is it that we ensure that we achieve the savings and improve the environment through energy efficiency measures and make sure that gets put in the bill? What do we need to put in here to ensure that we're conserving energy and not encouraging more consumption?

Mr Bennett: I'm not going to comment about exactly where to put it in, but I think that in the licensing process, if the Ontario Energy Board has instructions to take us from one kind of energy system to another through a gradual process, then it can grant licence to those companies that are going to meet their requirement and it can require them to make the changes similar to the changes they've forced Ontario Hydro to do on rates in the past and how they've done with the gas companies in forcing them to invest in demand-side management.

The Ontario Energy Board has to have the authority to do that. It has to be in the legislation so it's clear that this is what they're supposed to do.

Mr Lessard: Do you think it'll happen without it being in the legislation?

Mr Bennett: No, it won't. It'll be another hollow promise.

Mr Galt: Thank you, Mr Bennett, for your very thoughtful presentation. A common theme is evolving from the various environmental presentations. Just maybe a couple of words on our present status, which is such that it's almost impossible, if not impossible, to get green power onto the grid unless it's a demonstration project by Ontario Hydro. At the same time, we're presently in the position whereby there's no limit on what Ontario Hydro can import into Ontario. It can be very dirty power from some of the dirtiest stations in the Ohio Valley.

I think you would agree that at least moving ahead, we're going in a more environmentally friendly direction than the present. This legislation is enabling legislation to develop the regulations that are necessary, that are needed to protect our environment. Do you see anything in that

legislation that would impede the kinds of changes you would like to see?

Mr Bennett: As long as the environmental protections aren't part of the act per se, then I don't see anything that's going to take us from one kind of a system to another one. What I see is a set of rules that'll keep us in the same situation we're in now unless the rules are put clearly in legislation from the start that this is the goal.

I don't believe that the goal should be entirely limited to, "Let's create competition in the electricity market." I think the goal should be, "Let's make our electricity market be environmentally friendly and positive to our economy at the same time." If you take those three goals and put them in the preamble and then give the Ontario Energy Board the authority to act, they can take us to where we want to go, which is to a non-polluting electrical system.

Mr Galt: Basically that is in the preamble of the bill. I'd have to dig out the exact section for you. But we are into consultations at the Ministry of the Environment and will be into very extensive consultations, along with putting the final regulations on the EBR, as you're quite aware. I take it for granted that you are involved in the consultations or will be.

Mr Bennett: One of my associates is. Her report was that when she raised the question of carbon dioxide, she was told, "Thank you very much but that's not part of the discussion." If we're not going to be discussing carbon dioxide in terms of power generation, we're not really talking about the environment.

1320

Mr Galt: Ontario Hydro already has a commitment to the 1990 levels by the year 2000 and a 10% reduction by, I believe, 2005. I may be out just a little bit on the last figure, but certainly there is a commitment for a 10% reduction in the very near future. So there is quite a commitment already in place on the greenhouse gases.

Mr Bennett: Just to make a point that we made in the presentation, Ontario Hydro may well be committed to that, but if a pipe bursts at Bruce or Darlington or Pickering in the next year and a half, they won't make it because they'll have to turn on coal in order to supply the electricity. We're too dependent on too few large-scale sources.

Mr Galt: I'm interested in what you consider as renewable energy, of course wind and solar and probably biomass. When it comes to hydraulic plants to produce electricity, do you consider those as renewable or as green power?

Mr Bennett: It depends on what state they are in now and what would have to be done to bring them up. There are certainly many versions of hydraulic power that could be developed in Ontario without disturbing the environment. Each one would have to be individually examined, but in terms of renovating existing small scale and that sort of thing, a run of the river, those are the kinds of systems we look at. There are no more James Bays left in Ontario, there are no more big sources, and we wouldn't support them either.

Mr Galt: How much power do you think could be created by renewable energy as a total package for Ontario as it sits now? What percentage would be reasonable to produce — you've mentioned the ice storm. What happens to wind power when the ice storm comes on the windmill? What happens when the sun goes out when the solar panels are out there?

Mr Bennett: I've seen several scenarios over the last 20 years that could bring us to the point where it could be our sole source of power, but it's not something that's going to happen today or tomorrow. I think that's an unfair question. What I'm asking you to do is just establish the rules that will get us there. If the rules are there, we'll develop enough supply to meet the needs, but we need the rules and we also need aggressive conservation measures.

Mr Galt: Just for clarification, can I go back to a comment you made?

The Chair: Very briefly.

Mr Galt: Did you say all the power could come from wind and solar, that kind of renewable energy?

Mr Bennett: Ultimately that's what we'd like to see.

Mr Cullen: I'd like to thank you for your presentation to this committee. The work of the Sierra Club has I think been very important in raising public consciousness about environmental problems. Certainly my colleague Jean-Marc Lalonde from Prescott and Russell and myself here in Ottawa are very well aware of the impact on the environment from the recent ice storm and the contribution of global warming towards that.

I just want to pick up on one of the comments here, that the underlying thrust of the government's bill is to improve Ontario's cost-competitiveness. The notion is that Ontario's cost advantage of power and electricity has been eroded and therefore we need to restructure how we distribute this power source so that we can reduce our costs and compete elsewhere. But I see from your presentation here that we haven't fully comprehended all the costs to producing power. You're suggesting that these things ought to be factored in, such as what we do in dealing for example with cancer. I can very well remember that the federal government and I believe the provincial government, in deciding to ban smoking in the workplace, did it not only because of work health but they also did it because it reduced their cleaning costs etc. There were a number of factors. But you think we're not covering all the factors of the cost of production of power here in Ontario.

Mr Bennett: We never have. We've always allowed large industrial sources and Ontario Hydro to use the air as a waste dump. We haven't charged a fee for that and they're paying the price.

Mr Cullen: So you think as part of the licensing process each applicant, depending on the nature of the power source they're bringing forward, should provide the equivalent of some surety against claims for damage because of the kind of power they're producing: a bond, so to speak.

Mr Bennett: I think they should actually be contributing towards the health costs of Ontario in cash, and the

cash should be collected from the customer because they're deriving the benefit of the electricity. We should pay for the whole cost. We shouldn't hide the cost of anything.

Mr Cullen: I just want to pick up on the point Dr Galt was talking about in terms of Ontario Hydro's commitment to reduce hydrocarbons, for example, in the atmosphere, the 10% target. I see that you're looking at a role for the Ontario Energy Board to set conditions in their licensing. Are you suggesting, because we're all talking about a level playing field here, that the commitment that's being asked for by Ontario Hydro should be asked of every participant that provides electricity in Ontario? This is to reduce emissions, to reduce the negative impact on the environment, to set standards, whether you're a producer — obviously some areas would benefit over others, but that's because of producing cleaner energy. Those who use coal would have to reduce their emissions, those who would use nuclear power — I'm thinking of, say, a company coming from New York or a company coming from Ohio that wants to sell electricity here in Ontario — have to have that reduction in emissions as part of the licence application.

Mr Bennett: I think we'd find that if the American government, once it comes on stream with Kyoto, had a power plant in Ohio selling electricity into Canada, we'd be claiming that those emissions to generate that electricity are actually Canadian emissions. Even though they originate in the United States, if they're supplying energy to Canada, then they're our emissions and we'd have to put them into our calculations to reach our Kyoto goal. So yes, you would have to take all those things into account. When you start calculating all the complexities of nuclear power and coal, you conclude that wouldn't it just be better if you didn't make emissions when you produced electricity or if you didn't make radioactive waste, because it's a better system. That's why we're arguing fundamentally to use this as an opportunity to take us off the hard path of pollution and on to the soft path of renewables.

The Chair: On that note, we thank you very much for coming before our committee today. We appreciate your thoughts on this very important legislation.

Mrs Johns: Madam Chair, these sections in the act that Dr Galt was talking about with respect to the purpose clause and energy are subclauses 1(d) and (g) in the Electricity Act, and section 1, paragraphs 4 and 6 in the Ontario Energy Board Act.

ATOMIC ENERGY CONTROL BOARD

The Chair: I am now calling on representatives from the Atomic Energy Control Board. Good afternoon and welcome to the committee.

Dr Agnes Bishop: I'm Agnes Bishop, president of the Atomic Energy Control Board. To my far right is Mrs Audrey Nowack, senior legal counsel for the Atomic Energy Control Board; to my immediate right is Mike Taylor, who is the director of the power reactor evaluation

director; and to my left is Pierre Marchildon, who is the director general of the secretariat of the board.

Good afternoon and thank you for inviting the Atomic Energy Control Board to participate in your hearings on Bill 35. As president of the Atomic Energy Control Board, I appreciate this opportunity to express our views on the government of Ontario's plans to introduce competition into electricity markets and to restructure Ontario Hydro.

The AECB's purpose in appearing before you today is not to either oppose or endorse the move to a competitive electricity market and the restructuring of Ontario Hydro that would be implemented through the Energy Competition Act. Our objectives are to ensure that the concerns of the AECB as they relate to the operation of nuclear facilities are well understood and to suggest points of clarification in two clauses of the bill. It might be useful for me to put my remarks in perspective by briefly explaining the role of the AECB.

1330

As you are aware, the AECB has no role in establishing energy or economic policy in Ontario, and we fully recognize the provincial government's authority over energy markets. However, the federal government has primary responsibility for nuclear matters. Therefore, when electricity is being generated by a nuclear reactor, as is the case in Ontario, New Brunswick and Quebec, the AECB has regulatory control over the safe operation of those facilities.

The AECB was established in 1946 under the authority of the Atomic Energy Control Act. Our role is to regulate the nuclear industry in Canada in such a manner that the development and use of nuclear energy do not pose an unreasonable risk to health, safety, the environment and national security. As you may know, Parliament passed the Nuclear Safety and Control Act, NSCA, in March 1997, to provide Canadians with a more modern and effective regulatory framework for the nuclear industry. Under this act, the AECB will become the Canadian Nuclear Safety Commission, a name that will better reflect our mandate and modern role. Among other things, the new act enables the commission to require financial guarantees as a condition of receiving a licence. This is an important issue that I will return to later. The new act is expected to come into force in early 1999 after the necessary regulations are finalized.

The AECB is an independent federal agency that reports to Parliament through the Minister of Natural Resources, Canada. To achieve our mandate, the AECB administers a comprehensive regulatory and licensing system. In many areas we have a "joint regulatory process" to see that the concerns and responsibilities of federal and provincial government departments in such areas as health, the environment, transport and labour are taken into account in our regulatory process.

Turning to the issue at hand, the AECB is interested in the deregulation of Ontario's electricity market and the restructuring of Ontario Hydro for three reasons. First, it is important to all Canadians that the proposed changes do not compromise the safe operation of nuclear stations.

Second, we must be assured that adequate financial guarantees are available to cover the costs of decommissioning Ontario Hydro's nuclear facilities and managing radioactive wastes. Third, we must be satisfied that the organization named in an AECB licence is in fact competent and in control of the day-to-day operation of the licensed facility.

Let me expand briefly on each of these three points. From a safety perspective, it is important that structural changes in Ontario's electricity sector take into account the specific needs of nuclear power stations. Our two main concerns with the Ontario government's initiative are the control of the power grid and the financial pressures that are likely to result from the move to a competitive market. Both factors are important to the safe operation of nuclear reactors, and the impact that restructuring might have on these matters must be properly assessed and understood.

The overall control of the power grid has safety implications for nuclear stations in two ways. First, the safety case for Ontario Hydro's nuclear power stations assumes a certain level of reliability with respect to the grid. From an operational point of view, we would therefore expect power manoeuvres on the grid to be governed by rules that will ensure that the probability of power interruptions to nuclear stations is no greater than at the present time.

Second, I would like to point out that Canada's nuclear plants were designed to supply baseload electricity. They are not well suited to constant changes in requested output. The AECB would therefore also expect that nuclear stations not be required to change their power output frequently just because cheaper power can be purchased from elsewhere as market conditions fluctuate. At a minimum, the safety implications of operating in such a manner would have to be properly assessed and found acceptable before changes in operating mode could be authorized.

Let me now explain our interest in the financial pressures that may result from the move to a competitive market. As the business environment changes, care must be taken to ensure that when making decisions related to safe operation, nuclear operators are not unduly influenced by the pressure to compete against other energy producers or to make short-term economic gains at the expense of longer-term safety objectives. In a market-driven environment, plant maintenance, staff training and the size and qualifications of the workforce are examples of areas where issues of cost may impact on nuclear safety. Having adequate funding does not, of course, guarantee that nuclear plants will be maintained and operated safely in the long term, as can be seen by Hydro's current problems. It needs to be complemented by good management. But it is equally clear that adequate funding is necessary. With respect to this, the AECB would expect that the move to a competitive market would not jeopardize the implementation of Ontario Hydro's nuclear recovery plan. An important element in judging the success of that plan will be the sustainability of the collective measures put in place.

Our second area of concern relates to the financial implications of the proposed restructuring on long-term nuclear safety.

It is the federal government's policy that the producers and owners of radioactive wastes are responsible for the safe management of those wastes. This means that those utilities having nuclear power facilities are responsible for the costs of decommissioning their nuclear stations and management of their spent fuel. The federal policy will be implemented by requiring nuclear utilities to provide financial guarantees as a condition of receiving a licence from the Canadian Nuclear Safety Commission.

The prospect of a new electricity regime in Ontario raises some obvious and important questions about financial liability related to nuclear generating stations. I recognize that the Energy Competition Act includes provisions regarding the division of assets and liabilities between the proposed competitive electricity generating company and the proposed Financial Corp. The AECB has no position on the division of Hydro's assets and liabilities or on the associated issue of dealing with stranded debt. But I want to make the AECB's position clear: Adequate and appropriate financial guarantees must be assured under the new regime. Without an appropriate financial guarantee, the commission is unlikely to issue an operating licence under our new act. Clearly, the AECB will need to understand the respective roles of the commercial electricity companies that will be created by Bill 35 and the provincial government in assuming this liability.

For the committee's information, the AECB is developing a policy on financial guarantees for decommissioning activities and a guide for licensees, both of which will be available to licensees when the new act comes into force next year. These documents will clearly specify which licensees will be required to supply financial guarantees, what types of guarantees will be acceptable and how the amount of financial guarantees will be calculated. With respect to the types of guarantees, it is quite likely that there will be different types of mechanisms that will satisfy our requirements. Such mechanisms might range from protected cash funds to binding commitments by government.

The rationale for the third issue I mentioned, the need to ensure that the named licensee is in control of day-to-day operations of an AECB-licensed facility, is self-evident. If the owner and operator of a nuclear power station are not the same entity, the AECB must be assured that the operator, that is the licensed party, has adequate managerial control of the facility to ensure its safe operation. In other words, the operator must be making the day-to-day decisions about the facility and must be clearly accountable for all facets of its operation.

1340

It is important for everyone involved in the restructuring to understand that AECB licences cannot be transferred by the licensee, nor can reactors be operated without a licence. New operators will need to go through a normal licence application process, which could place

some constraints on the timing of Ontario's plans to deregulate electricity markets and restructure Hydro.

I want to emphasize that these issues are real concerns of the AECB which could have an impact on our ability to permit the operation of nuclear power stations by any new competitive electricity-generating companies. Before the AECB or the new commission could permit such operation, it would have to be satisfied that there is no undue hazard posed by the rules surrounding the operation of the grid, as they would impact on the operations of nuclear plants, or by the relationship between the owners and operators of nuclear plants. The nuclear regulator would also have to be assured that the new operator is competent and that appropriate financial guarantees are established. It may not be possible to permit operation of nuclear power stations until these issues are clearly addressed.

This committee may want to take these issues into consideration when preparing the timetable for implementing the legislation we are discussing today. I am pleased to inform you that my staff are collaborating with the staff of various involved provincial ministries to promote resolution of the issues. Staff will also be meeting with the Market Design Committee in the very near future to ensure that that group is aware of our interests and concerns in this important matter.

Those are the broad areas of concern the AECB has with Ontario's electricity restructuring initiative. However, we also have a couple of specific concerns with Bill 35 that I would like to raise with the committee. We believe these issues can be easily addressed through simple amendments that will not significantly alter the scope or intent of the proposed legislation.

First, I would like to bring your attention to section 37 of the Electricity Act, 1998, which deals with emergency planning. We believe the current wording of this section could lead to confusion on an issue where clarity is absolutely essential. Section 37 proposes to obligate the Ontario Ministry of Energy, Science and Technology to require the Independent Market Operator and the operators of nuclear power stations to prepare and file emergency plans with the minister and to authorize the minister to direct implementation of an emergency plan.

First, I should point out that regulatory authority over on-site emergency preparedness at nuclear facilities is exercised by the AECB as the federal nuclear regulator. The AECB requires licensees to prepare on-site emergency plans, which the AECB approves as a condition of the licence. We recommend that section 37 be revised to acknowledge federal regulatory jurisdiction for on-site emergency preparedness planning.

Of course we recognize that off-site emergency preparedness planning is an area where the provinces exercise authority, and when considering a licence to operate a nuclear plant, the AECB accepts the off-site emergency plan approved by the responsible provincial ministry. Currently, the Ontario Solicitor General is responsible for off-site emergency planning. The AECB has a good working relationship with the Ontario Solicitor General and we have been working with his office to harmonize our

respective roles in emergency planning. We will extend that to the Ministry of Energy, Science and Technology should it become involved as a result of the legislation under consideration today.

The AECB is also concerned with clause 105(1)(a) of the Electricity Act, 1998, which would give the proposed Electrical Safety Authority the power to make regulations for electrical equipment and systems in Ontario. The broad wording of this clause could be construed as implying provincial jurisdiction over the design, construction and operation of nuclear reactors. Although we have been assured by provincial officials that this is not the intended meaning of clause 105(1)(a), we recommend that the section be clarified to avoid confusion or the perception of overlap and duplication.

Let me close by reiterating that the AECB neither opposes nor endorses the restructuring of the Ontario electricity market and the restructuring of Ontario Hydro that will be implemented through Bill 35. Our objective is solely to ensure that the rules of operation in the new environment, as they relate to nuclear facilities, are well understood from the outset. We believe Bill 35 needs to clearly distinguish between nuclear and non-nuclear activities where appropriate, and to acknowledge the federal role in the nuclear area. This can be achieved by a few minor wording changes in the sections to which I referred earlier.

Ladies and gentlemen, thank you for your time and attention. I or my colleagues would be pleased to answer any questions you may have at this time.

The Chair: We have three minutes for questioning from each caucus. We'll begin with the government caucus.

Mrs Johns: Let me start, and hopefully some of my colleagues have some questions.

I'm struck by the wording, "deregulation of Ontario's electricity market." It would appear to many who have come before us that there are substantially more regulations involved in this than there have been in the past. In fact, the government believes that we're just introducing competition into the marketplace. I'd like to understand why you think this is deregulating the market.

Dr Bishop: When I give a reference to a deregulated market, I am talking about a competitive market.

Mrs Johns: So to you competition and deregulation are the same thing?

Dr Bishop: In terms of the commercial aspects only. I'm not talking about safety regulation.

Mrs Johns: Let me just say for the record that we believe we've added more regulations, we've given the Ontario Energy Board more power to control, and we think that's a step in the right direction. So I would disagree with that, but I certainly will try to consider what you're saying in the future.

Dr Bishop: I wonder if I could just repeat that when we are using the word "regulation," we are not talking about safety regulatory aspects. So I would not argue with you in terms of regulatory controls you're putting in.

Mrs Johns: I'm fighting internally here, and I think people who were on the select committee would feel the same degree in their minds. I listened to this, and as we went through the select committee we heard what you said and then we saw what happened at the nuclear plant with the Atomic Energy Board. You've taken a very powerful stand here about us trying to move to a competitive marketplace, which we think will be better for the people of Ontario. You say you're going to be tight on the licensing, you're going to be concerned about the financial aspects. I think in the financial liability section you talk about implementing financial guarantees.

My question, which I know is not nice of me to ask, is, why is all this happening so damned late? They've been in process for 40 years here and nobody has taken these on. The government of Ontario decides it's going to move forward and all of a sudden there are all these things that you're deciding to implement. I guess my question is the same as it was at the select committee. I wish some of these things had been in effect when I was a child and we would have a better nuclear industry now, rather than jumping on to the bandwagon much later.

Dr Bishop: There are two issues there. Number one, the new act was under preparation long before Ontario Hydro was considering its new restructuring. So the new act and the powers within that new act are not related to the step which the province of Ontario is taking over Ontario Hydro. I do not believe the two are related if you look at the time frame in terms of the new act for the Atomic Energy Control Board.

1350

I can't answer, obviously, why certain things were not done 50 years ago or 40 years ago. I would only say to you what is occurring now and that the NSCA, the new act, is not related to the Ontario Hydro situation. But it does make changes in terms of how the AECB or the new commission is going to have to carry out its regulatory activity, including the requirement for fiscal assurance, for decommissioning, and for waste management control.

Mr Conway: Dr Bishop and colleagues, we are pleased to have you here today.

This is, as Mrs Johns has indicated, very strong testimony. It reminds me, and I hope it reminds the entire committee, that the bulk of Ontario Hydro is the nuclear power division, in terms of its output, its assets, its liabilities, and most of its problems apparently — not all of them, but a goodly number of them.

I think what I hear you saying, Dr Bishop, is that there are some issues here that are going to be central to how that new policy framework around commercialization is going to affect the area of this business that you regulate; namely, the whole nuclear power division. What would you estimate, at the current levels of your understanding, the downstream costs of waste management and decommissioning with the existing Ontario Hydro nuclear power division to be?

Dr Bishop: I knew that question would probably be asked, and I'm hesitating to give even a ballpark figure. There are a couple of reasons for that.

At the moment, the federal government's response to the Seaborn committee in regards to management versus disposal has not yet been put before us, and there is a different cost factor in there. So I'm not prepared to give a cost factor per reactor or per station in terms of how many millions that —

Mr Conway: I understand that, but then to go the next step, I hear you very clearly on page 3 of this brief. You're basically telling the committee of the Legislature and the people of Ontario that you're not going to allow a situation to develop where Ontario Hydro decides to lease or swap some or all of its nuclear assets to an actual operator — it might be Duke Power, it might be the Acme Power Corp, it might be CanGen; it could be any number of possibilities — without there being met some very clear financial and other requirements. Is that not correct?

Dr Bishop: That's absolutely correct, because you now have new operators. The new operators must apply for a new licence. It may not be very difficult to obtain the new licence or it could be very complicated, depending upon the application of the new applicant.

Secondly, whether it was the old Ontario Hydro or the new one under the new act coming up, the same financial guarantees would have to be put in place.

Mr Conway: Given the number of flags that you have introduced here this afternoon, the number of very important questions that you have raised, is it likely that there could be significant change in the nuclear power division of Ontario Hydro over the next 12 to 24 months?

Dr Bishop: This will depend entirely on what the new company presents to us as their new means of operating. I don't know yet. The AECB has not received that. I don't know whether there are going to be insignificant changes or major changes.

Mr Conway: But surely if I'm a potential partner — and on the select committee of which Mrs Johns and I were a part, and Mrs Johns is absolutely right, what we saw a year ago was not a very pleasant picture. The committee agreed in the main that we would be anxious to look at some kind of partnering to see if we couldn't clean up at least the management of that deeply troubled Ontario Hydro division.

I guess the question I have is, have you seen anything, say in Britain, about behavioural changes there that would give us some idea of how quickly we might move forward in Britain with perhaps new operators?

Dr Bishop: I think certainly there have been stations in parts of Britain that have changed from a crown corporation to some private corporation. British Energy, as an example, are doing that. Stations have in some cases improved. In other cases, the total amount of improvement that the regulator would like to see has not occurred.

So there are situations that could improve the present management, and we have accepted the nuclear asset optimization plan that the present management has put into place as a solid, integrated plan. What we are waiting to see is that they can carry out that plan, implement it and sustain it. We would want to make absolutely certain — in fact, it is an area of some concern to us. If those new

implementation plans for the improvement should be in any way put behind schedule because of these new plans for Ontario Hydro, I believe that Ontario Hydro would be in very deep trouble.

Mr Lessard: Thank you very much for your presentation. I was struck by the statement made on page 3, and I'll quote: "Without an appropriate financial guarantee, the commission is unlikely to issue an operating licence under our new act." That's pretty strong stuff.

As part of the financial guarantee that you're expecting is an amount sufficient to cover the cost of waste disposal and decommissioning of nuclear power plants. The most recent estimate I have is that that is \$18.7 billion, and that is a figure that is currently under review. I would assume you have some role to play in the evaluation or assessment of that figure and that it's quite possible that the estimate is going to go up. Until we know what that final figure is, we don't know what the liabilities are that are going to be transferred from Ontario Hydro to the new company and we don't know what the financial picture is for the stranded debt.

Dr Bishop: That's correct. As I said, the AECB is not interested in the stranded debt. We are interested in having enough money to ensure that we are not left with orphan stations, orphan nuclear facilities, where there is not appropriate funding for decommissioning and where there is not appropriate funding for long-term waste management.

On day one when our new act comes into being, we have the power to do that, to require the financial guarantees. But it must be done in a sensible and responsible way, and there may be some time before we have to in fact act on that, because our licences, as you know, are every two years. In utilities that have been granted a licence under the old act, it will not be until they are due for a new licence that we will be putting the new act requirements into place for that licence.

I know of very few countries that do not require financial guarantees for decommissioning. I do not know of any situations where countries would leave a utility or a nuclear facility of the degree we are talking about without being able to guarantee to the public that there will be sufficient funds available. How that is worked out will depend on what the relationships are between the new company with its operator and whether there are relationships with the provincial government.

Mr Lessard: Just to follow up on that, when you're talking about the new company, I'm trying to clarify whether you consider the transfer of assets and liabilities from Ontario Hydro to the new generating company to be a transfer that requires your approval in order to effect.

Dr Bishop: What we are requiring is that the new operator must apply for an operating licence.

Mr Lessard: Is that the company we're calling Genco here?

Dr Bishop: That is the company you're calling Genco.

Mr Lessard: OK. Thanks.

Mr Conway: Ask not for whom the bell tolls.

The Chair: Thank you very much for coming before the committee today with your information. We will take this into consideration as we move forward on this bill.

Colleagues, the presenters for the next time slot, AGRA, are unable to be with us this afternoon. We have their brief; it has been distributed to you for your review. If we can find time for them to make a presentation further on in the week, then we will do so.

1400

CONSUMERS GAS ENERGY INC CORNWALL ELECTRIC

The Chair: The good news is that we have Cornwall Electric ready to make their presentation now, if they would come forward. Good afternoon. Thank you very much for coming before us.

Mr Perry Stover: Thank you very much, Madam Chair and members of the standing committee. My name is Perry Stover. I am here today on behalf of Consumers Gas Energy Inc and Cornwall Electric. With me today is Robert Winn. Robert is a general manager of Cornwall Electric, and he'll be talking specifically to some issues that Cornwall would like to raise with the committee.

We welcome the opportunity to participate in today's proceedings and, like other delegations you've already heard, we are pleased to offer our comments and our suggestions with respect to Bill 35.

I think it's in order to give a brief background of Consumers Gas Energy Inc. For the sake of brevity, I'll refer to it as CGEI. CGEI is a wholly owned subsidiary of IPL Energy, a Canadian company. CGEI owns and manages a group of energy utility and energy services companies that include Consumers' Gas Co, Consumersfirst, Consumers Gas Utilities and, recently, Cornwall Electric.

CGEI commends the initiative taken by the government to introduce this package of reform to bring competition to Ontario's electric industry. We believe competition will promote energy efficiency gains, create jobs, and improve customer choice in both energy commodity and energy services.

We applaud Bill 35's practical approach to societal concerns such as customer protection and protection of the environment. The bill also provides for industry transitional rules while at the same time establishing municipal authority over publicly owned electric distribution utilities and permitting private ownership should this be desired by the municipality.

The city of Cornwall, in recognition of market uncertainties and financial risk in a deregulated electricity marketplace, chose to exit the electric distribution business by selling the local utility to CGEI. In so doing, the city assured employment for Cornwall Electric staff, guaranteed three years of rates, established a rate-incentive mechanism to keep future delivery rates low, and received a cash payment that wipes out the city's debt and, with the surplus, establishes a local improvement fund that will stabilize property tax for years to come.

All this was made possible in advance of Bill 35 because Cornwall Electric was never part of Ontario Hydro's power grid and, as such, was exempt from the Power Corporation Act. The unique status of Cornwall Electric is significant and is relevant to our submission in respect of Bill 35. To give you Cornwall Electric's submissions I'll turn it over to Robert Winn.

Mr Robert Winn: Good afternoon. Cornwall Electric's history has made us an anomaly within the province, and with the risk of going on too long, I will give you a short rundown of Cornwall Electric's history. We were founded in 1887 when Canada was merely 20 years old and fully 19 years before the setting up of Ontario Hydro. In 1902 control of the company passed to Sun Life Assurance Co where it remained for 75 years. During that period we ran the freight railway system — electric of course — for local mills and factories, we ran the electric streetcars and trolley buses and later diesel buses. We even ran St Lawrence amusement park at the site of the present St Lawrence College in Cornwall, and oh yes, we ran the electric utility.

By 1977, when the city bought our shares, we were focused solely on the electric utility. In 1987, our 100th birthday, our special centennial project was to acquire St Lawrence Power from Niagara Mohawk. St Lawrence Power served the western part of the city of Cornwall and also the Mohawk territory of Akwesasne — at least the part in Ontario. In 1994 we again led the way by creating Cornwall District Heating, a cogeneration project using natural-gas-fired piston engines to generate about 4% of our electricity requirement and capture the waste heat and pipe it as hot water to heat 15 institutional buildings within the city. Most recently, two weeks ago, we had a new owner, Consumers Gas Energy Inc, with the sale of the shares of our company.

Electrically, we're not part of Ontario. We're actually part of New York state. New York state is 30 degrees out of phase with Ontario Hydro's system, so we need to have expensive phase shifters to connect on to the Ontario Hydro grid. We are fed by lines owned by Cedar Rapids Transmission Co, which are possibly the oldest operating 115,000-volt lines in North America. Cedar's lines were built by Alcoa in 1915 to deliver power from Quebec to Alcoa's smelter in Massena, New York. It's a line of approximately 60 kilometres, 40 of which are in Ontario. Hydro-Quebec, for its part, bought the Cedar's transmission lines in 1985.

Notwithstanding Ontario Hydro's massive impact on the Seaway construction 40 years ago, Cornwall, the Seaway city, has never bought any power from Ontario Hydro. Why is this? Because we could always do better elsewhere. It was purely a commercial decision. Customers in Cornwall pay less for their electricity than most other customers elsewhere in Ontario.

That brings us up to date to where we are today. Now I'd like to discuss what we like about Bill 35, because we are here really in support of it, and then discuss a few topics of concern to us.

The first issue we like about what we see in Bill 35 is competition. We've been buying power competitively for many, many years and I'm here to tell you that competition's good. An organized market with defined access to the grid is even better — better than what we've had heretofore.

The second thing we like is the stated intention to level the playing field. Remember, we've been a very tiny player in a market dominated by very large players. Here we concur with the Municipal Electric Association and others that the intention to level the playing field must be backed up by necessary regulation in order for it to happen.

Another aspect we like is the creation of an independent Electrical Safety Authority. This is part VIII of the act. This is not a high-profile part of the act by any means, but one that's very necessary for the safety of all Ontarians. We like the licensing of marketers and making them subject to the consumer protection laws. In our view, this can't happen quickly enough. We already have many complaints from our customers about bad business practices from some of the marketers.

We like schedule C, which is the tiniest little part of the bill. It expands the definition of "participating employer" in the Ontario municipal employees retirement system, OMERS. This goes a long way to removing the anxiety of employees in the municipal hydro sector. Generally, these are long-service workers who tend to stay in the industry for their entire careers.

1410

Finally, we have to like the governance of municipal utilities. Cornwall Electric in many ways is the prototype for what you've got in the act. We're incorporated under the Ontario Business Corporations Act, the city was the sole shareholder that operated it as a stand-alone, dedicated-purpose entity, and in the last year, a year-long review of its ownership and sale of the utility to Consumers Gas Energy we think makes us a prototype again.

I'd now like to address some specific concerns for Cornwall Electric. Those concerns are the timing of the effective date of schedule C — I'll explain that in greater detail — the issue of the stranded debt of Ontario Hydro, Ontario Energy Board regulation and the fate of existing power contracts.

Under existing legislation, our employees cannot remain in OMERS. Schedule C expands the definition so that we will be able to rejoin OMERS at some point to be defined later, but what happens to our employees' pension for the few intervening months? We're working closely with the Ministry of Municipal Affairs and Housing and the Ministry of Energy to seek an amendment to allow Cornwall Electric employees to remain in OMERS without a gap and we ask that you look favourably on this amendment.

Concerning Ontario Hydro's debt, as Hydro did not construct assets to serve Cornwall, none of their debt was incurred to serve our customers. It would be wrong, in our view, to force Cornwall's customers to pay for a system that can serve only other parts of the province. It would be

akin to asking Ontario Hydro's customers to pay extra to retire the debt of BC Hydro.

Concerning the Ontario Energy Board, Cornwall Electric now has an agreement with the city of Cornwall setting out guaranteed rates for the next three years, followed by incentive gains sharing between the customers and the company for more than 30 years after that. We think that this local solution will work well for the benefit of all customers and we ask you to allow it to work by giving it precedence over Ontario Energy Board regulation.

Finally, concerning existing power contracts, we have contracts with power suppliers in New York state and in the province of Quebec stretching out all the way to the year 2020. Recently, we've signed sales contracts with the city and with other customers to ensure that we have a need for all this purchased power. Our worst case would be if our sales contracts were wiped out by section 25 of the bill, leaving us with contracted supply but no sales, and so we ask that this matter be addressed.

In conclusion, I want to thank you again for this opportunity to present our support for Bill 35. We have a written submission, which I believe you have now for your consideration, and we would be pleased to answer your questions.

The Chair: Thank you very much. We have five minutes per caucus for questions. We begin with the official opposition, Mr Conway.

Mr Conway: Thank you very much, gentlemen. You have a very interesting story to tell and you've told it very well. My friend from Etobicoke I think was suggesting that maybe my friends in the upper Ottawa Valley should make a similar kind of arrangement. We had one actually well before there was an Ontario Hydro. Back in the late days of the previous century the privately incorporated Pembroke Electric Light Co developed electricity in the province of Quebec and delivered same across the river to the people of my city. We've had a very interesting and a rather similar experience that I won't bore you with. So I thank the presenters.

A couple of obvious questions. One of the benefits that is expected, and it would certainly be expected on my part as a consumer, is the possibilities that convergence provides in this brave new world into which we are moving. My first reaction when I heard the Cornwall deal was that's got to be convergence. We've got a well-established private gas company, gas distributor, buying the electrical utility. Surely there are opportunities of convergence to the benefit and credit of the consuming public in and around the city of Cornwall. Would that be part of your expectation as well?

Mr Stover: Yes, Mr Conway, that is part of the expectation. An example of convergence I can give you is that we intend to converge energy-efficiency programs so that the customer can make one call to Cornwall Electric and get advice and equipment to conserve both electricity and natural gas. We feel we can deliver that sort of service more efficiently as a joint effort than as an individual effort. Another example is something as basic as meter reading. One meter reader can read both meters at the

same address. Another example is joint billing. Another example is locating facilities, whether they're hydro facilities located for construction purposes or for gas purposes. The same technician or engineer can provide that same service. Those are the sorts of things that we visualize, as the future unfolds, as examples of convergence.

Mr Conway: I appreciate that. You've been very helpful with specific examples. I personally believe those opportunities will deliver not only rate benefits, hopefully, to me, but also expand the range of service because I expect you'll be buying a cable company one of these days soon, if you haven't already done so, because it's going to be one wire presumably coming into my house and one pipeline. I say that seriously.

The problem on the other side is the danger. There's been some discussion here about putting a fire wall between MEUs so they don't cross-subsidize. We had the people from Sault Ste Marie the other day. Was it Sault Ste Marie where their utility delivers two services? I think there is certainly a concern in part of this debate that public utilities not use their captive markets to cross-subsidize. What protections am I going to have as a consumer in Cornwall who kind of likes the idea of convergence that Consumers' Gas isn't going to find some clever way to what I'd call manipulate the market?

Mr Stover: In Cornwall we believe that will be easy to explain because in Cornwall the gas company is owned by Westcoast Energy, Union Gas, not Consumers' Gas. It is a different company, so we can't cross-subsidize Westcoast Energy. However, in areas that we currently have within the gas industry where there might be this concern of cross-subsidization, each year we go through public hearings conducted by the Ontario Energy Board, and these activities and these actions have to be explained very thoroughly. As you're probably aware, there's a very active intervenor group at the energy board.

Mr Conway: So the energy board will be the protection?

Mr Stover: Yes.

Mr Conway: Mr Winn, a question to you: What is the interconnect capacity between Cornwall Electric and Ontario Hydro retail in your part of southeastern Ontario?

Mr Winn: There is one interconnect line that got used for the very first time in January this year.

1420

Mr Conway: That was going to be my question. Has there been any set of circumstances in the long and storied history of Ontario Hydro where Cornwall Electric, for whatever domestic reason, required the backup, directly or indirectly, of Ontario Hydro? I ask the question because, Ms Johns, we've talked earlier about people who for lots of very interesting reasons want to exempt themselves as independent duchies from any of the special charges to write down that massive Ontario Hydro debt.

Mr Winn: The link between Ontario Hydro's St Lawrence transformer station and Cornwall Electric's Rosemount substation is one link that can feed only one part of the city.

Mr Conway: So for the last 75 years Cornwall Electric has never ever had to think or act on the basis that they needed Ontario Hydro as a potential default provider.

Mr Winn: Once, approximately 10 years ago, when it looked like the market for power was such that we wouldn't be able to buy competitive power, we approached Ontario Hydro to see if they would be willing to sell to us and at that time we were refused power on the basis that we were not a municipal utility in their eyes.

Mr Conway: Do you see any opportunity —

The Chair: I'm sorry, I must interrupt. Mr Lessard.

Mr Lessard: Do you think you may be able to expand the area where you provide service from the existing boundaries?

Mr Winn: I think in all practical terms there's a limit to that in that from a societal point of view we don't want to see competing sets of wires down the same road. If we can provide better service and can make an arrangement with the existing wires owners, then there might be an opportunity to expand, but that requires a business arrangement with the existing owners.

Mr Lessard: That's not something you've considered in the future, then? You haven't investigated that possibility seriously?

Mr Winn: Not in a serious way.

Mr Lessard: One of the issues we're having to tackle as a committee is the ability of Ontario Hydro to purchase municipal electric utilities and the possibility of municipal electric utilities expanding into areas that are currently serviced by Ontario Hydro. You've mentioned your criticism of what you perceive to be an unlevel playing field. I wonder if you have any theory why Bill 35 sets up this unlevel playing field for those situations.

Mr Winn: I'm not suggesting that Bill 35 sets up a non-level playing field. I think it's a question of the regulations needed to make the playing field level not being contained in the legislation as it's written right now. Regulations are to follow, I believe.

Mr Lessard: In your brief you said you object to what you refer to as a tax holiday. That's what I was asking with respect to.

Mr Winn: There, the essence of paying off Ontario Hydro's debt by using grants in lieu of income taxes and taxes on capital makes a lot of sense. It creates a level playing field between utilities regardless of their structure and ownership. The concern on our part is that if that has a sunset that's fixed in time or fixed once the debt's gone, then suddenly there is going to be a tipping of that balance again. I don't think that serves the customer well, to have all of a sudden one class of utilities that has a leg up over all the others.

Mr Gilchrist: I appreciate your presentation, Mr Stover and Mr Winn. You raise three issues. In one case, we've certainly heard from two other entities which are in a similar situation and I think there's tremendous sympathy to the issue of the contracts you've signed. I don't want to say to a hundred percentile, but I'd be very surprised if we don't wind up being sympathetic to the clarifications you've requested there.

Similarly, the suggestion about the OMERS effective date. I certainly would like to know from staff or legal counsel why we couldn't do that. You've certainly raised an issue no one had before.

On the third issue, I guess I should half tongue in cheek suggest that the sitting member in Cornwall has on a number of occasions, including when he was part of the government, had a choice to not guarantee that stranded debt, which is now going to have to be covered in some other way than off the backs of the taxpayers in Ontario, and he chose not to follow a different course.

The question I would like to put to you, because I think his is quite intriguing, is we now finally have someone at the municipal level who can talk in concrete terms, not some philosophical discussion, about how you buy and sell assets. I don't know if you were privy to the conversation we had before lunch today with some of the other representatives from MEUs. My recollection is you paid \$68 million for the assets you bought; 22,500 customers, I think I heard you say.

Mr Stover: That's correct.

Mr Gilchrist: So \$3,000 per household. What was the book value that Cornwall was carrying that for?

Mr Stover: The book value was about \$40 million and the book value included the cogeneration plant, CDH, that Robert mentioned.

Mr Gilchrist: Was that part of —

Mr Stover: That was part of the \$68 million, yes.

Mr Gilchrist: So they got a 75% premium over book value.

Mr Stover: They got a premium over book value, yes.

Mr Gilchrist: That's interesting, that that is the percentage, because it just so happens that when we were at Sudbury last week, the MEUs up there were suggesting that Hydro was terribly unfair to ask for a certain amount of money per household if they wanted to buy some of Hydro's more distant customers. In fact they suggested that they should only have to pay \$1,400 in one case and \$1,750 was the other suggestion; in one case, half of what you had to pay. There would appear to be a contradiction, would you agree?

Mr Stover: Not understanding the reference you made —

Mr Gilchrist: When MEUs buy from Hydro they would have to buy at book.

Mr Stover: — but I can say that from our perspective the premium was paid for strategic reasons. As the future unfolds and more assets are available, whether they are electricity or water, we believe that premium will decrease. The strategic interest now is our interest in the electricity business as it is deregulated, it's the learning experience we hope to gain from Cornwall Electric and we're positioning ourselves for the future. We felt that as worth a premium.

Mr Gilchrist: When there's only one game in town, it normally winds up being the case. You would agree with me it was a seller's market.

Mr Stover: At that time, yes.

Mr Gilchrist: To some extent, if in fact there still is only one supplier in each area, it's still an industry that probably will never see the sort of totally open competition that you might enjoy in, say, the hardware field or the sale of cars.

Interjection: Canadian Tire.

Mr Gilchrist: Canadian Tire's products, yes, just to give a specific. You will always find that the seller has an advantage; namely, if you don't use his or her wires, you don't get into the game. Would that be correct?

Mr Stover: Can I give you just a slight deviation of that?

Mr Gilchrist: Sure.

Mr Stover: Theoretically, if all 275 MEUs were on the market at the same time, then it would be a buyer's market.

Mr Gilchrist: I will grant you that, yes, because there's only a limited capacity of other private companies that want to enter. But if I owned another MEU right now and I was the first one out of the gates —

Mr Stover: You would get a premium.

Mr Gilchrist: — I'd get a premium today. Would you agree with me that if at the same time those MEUs that are talking to Consumers' Gas, and there are MEUs talking to Consumers' Gas and to other companies, it's a contradiction if they turn around to Ontario Hydro and say, "I know that when I buy your assets for book value, I'm going to get market value because that's what Consumers' Gas will pay me"? You will pay what those assets will generate as an income-generating business, correct?

Mr Stover: That's correct.

Mr Gilchrist: The artificial depreciated value on the books has no relevance to what Consumers' Gas would consider the value of an asset.

Mr Stover: That's correct.

Mr Gilchrist: Thank you. If the MEUs had come to us and said, "You let us buy Hydro's customers at book value and we guarantee that we'll sell to any private company at book value," I don't think we'd have a problem here, but it's fairly obvious that there's going to be a windfall.

Let me ask you very quickly the final consequence of that. If Hydro does not recover the best possible value for its assets, every dollar less than that increases the stranded debt, does it not?

Mr Stover: It does, yes.

Mr Gilchrist: So any kind of deal or any kind of artificial accounting savings that was used to artifice a lower price to an MEU would in fact wind up on the backs of all the other taxpayers in Ontario and, ironically, even the customers in that locale, because there would have to be a greater stranded debt charge, correct?

Mr Stover: In your example, yes.

The Chair: On that note, all of the committee members are grateful for you taking the time to come before us this afternoon with your interesting story, as Mr Conway said, and your advice.

KANATA HYDRO-ELECTRIC COMMISSION

The Chair: I would now like to call upon representatives from Kanata Hydro, please. Before you begin, I would like to thank you for being able to make your presentation early today because of one group that wasn't able to make it. That makes our job easier and we thank you for that.

Mr Rick Shields: Madam Chair and members of the resources development committee, good afternoon. My name is Rick Shields and I'm here as vice-chair of the Kanata Hydro-Electric Commission. Our chair, Christopher Lever, extends his regrets that he cannot be here personally to deliver our message. Joining me is Guy Cluff, the general manager of Kanata Hydro.

Kanata Hydro serves a population base of over 51,000 people in the city of Kanata. In addition to over 17,000 homes, we supply electricity to a broad range of commercial and industrial customers in Canada's Silicon Valley North.

Kanata Hydro supports the government's objectives to make Ontario's electricity industry more competitive and thereby foster the creation of jobs and investment in the province. We have, however, some serious concerns about how Bill 35 attempts to achieve those objectives.

As a municipally owned public utility, Kanata Hydro continues to be committed to providing its customers with the electricity they need in a reliable, safe and cost-effective manner. It is within this value system that we offer the following comments on policy issues related to Bill 35.

We have grouped the first broad area of concern for Kanata Hydro under the title "Benefits for all Customers."

Kanata Hydro embraces the government's intention to move to a competitive marketplace, provided that such a marketplace will provide a net benefit to our customers. Deregulation in other jurisdictions has not always provided benefits to all consumers. Kanata Hydro believes that the move to competition should not benefit some at the undue expense of others.

While the government has made numerous statements regarding the goal of the act and how it is intended to provide low-cost electricity to consumers, the act is not entirely explicit in making such a commitment. We do not propose that the act mandate a rate reduction, but we would like to see the principle of low-cost electricity entrenched in the purpose section of both the Electricity Act and the Ontario Energy Board Act, 1998.

As enabling legislation, Bill 35 contains little detail, yet encompasses complex issues. To protect the interests of consumers and to facilitate the interpretation of the act by regulators and the courts, the act should include a commitment to the principle of low-cost electricity through a competitive system, in the view of Kanata Hydro.

Our commission is also concerned about the amount of market power that will continue to reside with Genco following deregulation. Under Bill 35, Genco will own more

than 90% of the province's generation capacity and will supply more than 80% of the province's demand. Currently, generation accounts for about 70% of a consumer's electricity bill. Clearly, generation represents the largest opportunity to reduce electricity costs through competition.

Ontario's interconnections with neighbouring provinces and the United States are limited to approximately 15% of Ontario's electricity needs. The expansion of these ties would be limited in potential and lengthy to construct. For some considerable time into the future, therefore, Genco will have a near-monopoly hold on generation in the province.

In the second interim report of the Market Design Committee, the MDC states:

"We concluded early in our mandate that the decision to leave Ontario Hydro's generation assets within a single corporate entity with no constraints would be a serious impediment to developing a fair, efficient and competitive electricity generation market in Ontario, and that such a decision would likely result in market participants and other investors refusing to risk their capital and efforts in this market."

While the Market Design Committee has been considering methods of mitigating Genco's market power, these methods and measures are only second-best solutions. Take, for example, the MDC's consideration of vesting some of Genco's generation capacity. Fixing the price on a significant amount of Genco's generation may actually serve to remove a large portion of generation from the competitive wholesale market.

We have serious concerns that Genco will dominate the marketplace and therefore limit the benefits of competition to consumers. Genco could potentially use its market power to raise prices to consumers and/or to operate in ways that could prevent competitors from entering the generation market. This would not only reduce the benefits to consumers from industry restructuring but would also place at risk new investment and job creation in the industry.

Other jurisdictions have recognized this potential barrier to competition and have unbundled generation into multiple stand-alone businesses. We strongly support that this approach also be taken in Ontario. To avoid the situation where these businesses reassemble themselves after deregulation, the legislation could restrict subsequent mergers of separated generators.

Kanata Hydro also is concerned about the restrictions that would be placed on municipally owned local distribution companies, or LDCs. The act would place restrictions on the types of business activities that LDCs and their affiliates could engage in while 50% or more municipally owned. Private sector competitors and both Servco and Genco will not be similarly restricted.

The government has expressed their objective to create a level playing field between municipally owned and private sector businesses in the competitive marketplace. The restrictions in Bill 35 could be construed as being contrary to this objective. The private sector competitor

will be able to offer value-added services that the municipally owned LDC will not. This would seriously restrict the ability of the LDC to compete and may even affect its viability.

The local distribution company is a valuable asset of a municipality. The act should allow local decisions to be made on how that value can be managed and developed to the best benefit of the shareholders. Local markets, expertise and skills will influence business decisions and the desire of the LDC to pursue them.

We feel that the act should remove all restrictions on local utilities and leave these decisions with the shareholders who have the ability to make informed business decisions about the appropriateness of the LDC's business activities.

Kanata Hydro is also concerned about the stranded debt recovery charge. Special payments are imposed by Bill 35 to recover Ontario Hydro's stranded debt. Bill 35 leaves open the prospect of the continuation of these charges once the stranded debt has been paid. While we support such a charge as legitimate for the purpose of recovering the debt, we would consider the continuation of it beyond debt retirement as inappropriate. Special payments directed at recovering the stranded debt should be eliminated once the debt is retired.

Similarly, Kanata has concerns about the adjusted gross revenue special payments that are proposed in the legislation. Bill 35 would require LDCs to annually pay a special payment or tax on their adjusted gross revenue. Again, this appears to be somewhat inconsistent with the government's objective to create a level playing field since private sector competitors will not be subject to charges or taxation in this form.

Since municipally owned distribution companies will be incorporated under the Ontario Business Corporations Act, we should be subject to the same tax or tax-equivalent calculation as any other OBCA corporation.

Based upon the principle that equity equals equality, the adjusted gross revenue special payment should be eliminated in the interests of creating a level playing field or amended accordingly.

With regard to Servco's transmission and distribution activities, Kanata Hydro notes that Bill 35 establishes Servco as the owner and operator of both the former Ontario Hydro transmission and retail distribution systems. Recognizing that transmission is a natural monopoly and that retail distribution will participate in the competitive marketplace, the two functions of Servco should be clearly separated into two distinct entities. This will avoid the potential for cross-subsidization.

With regard to the transition to competition, Kanata Hydro firmly believes that caution needs to be exercised in Ontario's electricity system moves to a competitive market. Care needs to be taken to get it right the first time. The Market Design Committee has already identified a number of technical and operational items, such as standard data exchange formats and load profile billing, that will require resources and time to address.

Many references have been made to deregulation in California and the United Kingdom, but in both jurisdictions the deregulated marketplace was implemented over a longer time frame than the 18 months proposed in Bill 35. Most other jurisdictions have introduced competition in the generation sector before addressing the retail sector. In doing so, they recognized that the greatest opportunity to produce savings rests in the generation sector, which represents 70% of the electricity dollar. They also recognized the regulatory, technical and consumer education challenges associated with opening the retail market to competition.

We believe that it may be unrealistic to expect the transition to full wholesale and retail competition in the time proposed, especially if the objective is to have it done right. Bill 35 should require that retail access pilot projects be conducted to ensure the markets and the associated systems are ready before full-scale access is permitted.

1440

With respect to consumer education, Kanata Hydro has concluded that Ontario electricity consumers need to understand the changes coming to their electricity system and the effect it will have on them as customers. Kanata Hydro believes the government should conduct a public information program to inform consumers about deregulation and what it will mean to them.

With regard to unlicensed energy brokers who have entered the marketplace of late, our commission continues to hear complaints from customers about energy brokers knocking on doors and trying to sign them up to future electricity supply contracts. Customers are unclear as to who these brokers are and what is happening with deregulation.

In addition to the previously noted consumer education program, Kanata Hydro thinks it may be advisable that the act make provision to invalidate any supply contracts signed by customers prior to a licence being issued by the Ontario Energy Board or a comparable mechanism to ensure that consumers are protected in this transitional period.

In conclusion, Kanata Hydro supports the government's objectives to make Ontario's electricity industry more competitive and thereby foster the creation of jobs and investment in the province. As we have attempted to outline today, however, we have some serious concerns about how Bill 35 attempts to achieve those objectives.

Thank you for the opportunity to speak to the committee today. We would be pleased to address your questions.

The Chair: Thank you very much. We have five minutes for questions from each caucus. We'll begin with the NDP caucus.

Mr Lessard: This morning one of the first presenters we had was from the regional municipality of Ottawa-Carleton. They were talking to us about their desire to establish an entity that provides electricity service for the whole region. Have you been involved in those discussions at all?

Mr Shields: I can say that Kanata Hydro and the city of Kanata have recently convened a working group to examine the issues that will relate to the changes that are coming both with respect to Bill 35 and potentially with amalgamation initiatives so that the utility is well positioned to make appropriate decisions that are to the benefit of its ratepayers on a going-forward basis as this legislative process continues. The working group will be meeting during the next several months, and I would expect that that is one of the issues they will be closely examining.

Mr Lessard: Are the provisions of Bill 35 going to be of assistance or do you think they may be a hindrance?

Mr Shields: As the working group has not undertaken its work, it may be premature to comment on that aspect of the bill.

Mr Lessard: One of the areas we've heard several times with respect to is the ability of local distribution companies to engage in types of services other than electricity services unless they're 50% divested from the municipality. Do you have any theory as to why there is that provision in the bill, the restriction that you can't be involved in providing any other services?

Mr Shields: You're asking me to speculate on the intention of the drafters?

Mr Lessard: Yes.

Mr Shields: I'm not sure I can add a lot of value on that particular point. It may be rooted to a certain extent in the traditional approach to municipal activities in the business sector and the desire to separate government and private enterprise. As to whether it's appropriate in the context of this particular legislation, which creates a municipally owned corporation and makes provision for it to engage in certain forms of competitive activity, whether it's necessary to hamper that move to a competitive footing to put restrictions on that activity, I entertain some considerable concern and I think that reflects the commission's feelings as well. I think there is a general uncertainty as to why that has been added to the legislation. We certainly are looking for answers in that area as well.

Mr Lessard: So am I. I share your concerns, your feeling that we may be moving ahead too fast. I also agree strongly with you that the move to competition shouldn't benefit some at the undue expense of others. I sincerely hope that's the way it turns out.

Mr Gilchrist: You raised a concern about cross-subsidization. That's certainly something that throughout the bill we've made every effort to try to prevent, to make sure there's clear accounting. I would draw your attention to two sections: subsection 47(4) of the Electricity Act, and 69(2)(f). Both cases require that the transmission company, Servco, would have to maintain separate accounting, so there would not be an opportunity for them to artificially reduce the rates of the retail customers by propping up a higher transmission charge. If they did it, it would be obvious what they had done. So the accountability is there.

I'm not going to belabour the point about market value sales with another MEU, but you certainly touched on a couple of other points that I think have been peripheral to

a lot of the concerns brought forward by MEUs all across the province.

Let me just explore from your perspective — Mr Lessard alluded to the first or second presentation we had this morning and the sense in the minds of some municipal governments and, quite frankly, some MEUs that they will have to find some way of combining to more capably compete with Hydro on a level playing field even when it comes to buying energy and turning around to resupply their customers. Has Kanata Hydro done any kind of analysis of what is the minimum size an MEU should be before it has any chance of going out there and being able to provide the best quality of service at the lowest price for its customers?

Mr Guy Cluff: Some of that work is still being done. If we look back on the current situation we are in now, there seem to be a number of studies around the world addressing the issues of economies of scale obtained in utilities. Keeping in mind that that is exclusive of operating in a competitive environment, so one has to take that analysis for what it's worth, those studies seem to indicate that utilities achieve economies of scale fairly early on in life by standards quite small — 4,000, 5,000, 6,000 customers and up. There's some indication that when you get large at the other end you may actually have some loss of economies of scale.

What's more important in the utility business seems to be economies of density issues. It's a matter of what kinds of revenues you are getting for the investment you've got in plant, in essence. When you take that analysis and how much of that is attributable directly to a competitive environment, that is one we're trying to study. I don't know of anybody who has done that analysis. We'd be pleased if someone has any information and would let us know. But I haven't found that directly.

Mr Gilchrist: We've seen from a variety of sources, including one of your neighbours, Nepean Hydro, in the chart they send out to their ratepayers, a wealth of information. John has been showing it in every hearing. It's quite intriguing when you look at the fact that Toronto is way up there, \$92.50 per thousand kilowatt hours, and you folks down here in the Ottawa area are all in the \$70 range. It varies by a couple of dollars but there's quite a differential. You'd agree with me that all of you are buying your power from Ontario Hydro at exactly the same price.

Mr Cluff: It depends on the supply voltage that we're buying it from, but given that we buy it at the same supply voltage, we're paying the same rate.

Mr Gilchrist: Forgive me, yes. When you compare apples with apples in the voltage, you're paying the same price. So it has to follow, then, that the difference between that and the retail price to the customer is the markup of the utility exclusively. You make no other payments to anybody. You buy your energy from Hydro; you sell it to your customers. The difference is the markup. I'm not saying profit.

Mr Cluff: Yes, the additional cost to cover whatever it is locally is added either in value or in contribution to net

income. For example, I believe the Toronto situation is reflective of different levels of service.

1450

Mr Gilchrist: It's also reflective of \$50-million new offices built and the fact that all of them are still continuing to invest in new computer systems. You would think one of them would now become the billing expert. But the reality is that if other MEUs — and I think the MEUs in Ottawa have a right to be proud of the rates you've set here in Ottawa, an 8.6% markup.

Mr Cullen: Debt-free.

Mr Gilchrist: Debt-free, that's correct. I think you have a right to be proud of that.

Should the ratepayers elsewhere in Ontario, just by following benchmarks, never mind any further benefits from competition — by having this information out there and far more public now, should we see some significant savings in the parts of the province where the MEUs have not been as frugal or as efficient as they have been in the Ottawa area? And if not, why not?

Mr Cluff: Obviously, I'm not intimately familiar with the financial situation in other areas of the province. I think traditionally utilities have, as we have within the Ottawa area, for example, used competition within ourselves. While we're not competing in the same service territory, we're certainly competing against each other from a community level to leverage our costs down, and at the same time co-operating on what areas seem to make sense, if there are advantages to us collectively in getting together for various issues.

For example, and this isn't exclusive of the utilities, our utility co-ops with the regional municipality on all sorts of purchases, everything from tires to paper, because it makes economic sense to do so. I know other utilities in some areas have formed their own co-ops and have gone out and done significant works as far as affecting cost savings as well.

Mr Gilchrist: Let me just say as a Toronto ratepayer, along with 2.4 million other people, I just wish some of your competitive zeal had been felt within that municipality. Perhaps you could second some of your officials down to show them how it's done.

Those are all my questions. Thank you both.

Mr Hastings: My question, gentleman, relates to the transition period that you focus on. In other deputants' submissions, they have pointed out that if you don't have a fairly exact parallel of competition at both the wholesale and retail levels, you're obviously going to end up not having the significant benefit of lower electrical prices. All we have to do is look at California and, more so, closer to home, Alberta.

What I'd like to know is, in your submission, how long do you consider it to be an orderly transition before you would have real competition at the retail level? If you want to sort of hold off on that for, it would strike me as being probably five years, when would we ever get, in your estimation, to retail competition if it's not to be allowed almost in parallel, in sync, with competition at the wholesale level? How many years do you expect —

Mr Cluff: I don't think we're talking anything, in our minds, like five years. I think we are talking like a year, something to prove the process on the retail side, as we suggested, to put a pilot project in a number of areas together — we had the group I guess from Pembroke offer to do that for us this morning — but simply to test the technologies as well as the markets. There seem to be an awful lot of technical issues wrapped around the retail side of competition, and quite frankly I don't think all of us have answers to those yet.

For example, the Market Design Committee has already addressed the issue of, how are you going to build this? Unless you force everyone to go to interval meters, we're going to do this on load profiles, particularly in the residential sector. The software has to be created to do that. The data standards have to be developed to allow the interchange of data between all the players — the retailers, the LDCs, the IMO, the Gencos — to be able to monitor all of this stuff. I don't know if anybody has been involved in developing standards, but they usually don't happen over a weekend.

Mr Hastings: Generally, though, when you say one year for a pilot project in software development, it usually ends up being two and three and four in any sector of the economy. If it's that complicated in terms of the technical capacity to get competitive at the retail level respecting metering and the lower voltages versus the higher, it would seem to me you'd have to take much more than one year.

Mr Cluff: That's a possibility.

Mr Hastings: Yes, and that's my problem with your orderly transition.

Mr Cluff: My indication of the year was not to infer that we want to delay this thing in perpetuity. As we mentioned in our presentation, we support the concept. It's going to be very difficult to go back, though, if you make a mistake.

The Chair: To the official opposition.

Mr Conway: Thank you very much, gentlemen. I appreciate your attendance today.

I'd just like either one of you to tell me a little more about Kanata Hydro, 17,000 homes. What percentage, roughly, of your total load is a residential load, high chart?

Mr Cluff: Revenue-wise, it's about 48% residential and 52% commercial-industrial.

Mr Conway: Do you serve all of the electricity consumers in the city of Kanata?

Mr Cluff: The full geographic boundary.

Mr Conway: I take it that in the contiguous municipalities of West Carleton, Rideau and Osgoode, that's Ontario Hydro retail?

Mr Cluff: Correct, yes. Our neighbours, Goulbourn Hydro, look after the village of Richmond, and the rest of the township is Ontario Hydro.

Mr Conway: You raised, Mr Cluff, a very good point. You used a phrase I have not heard in these debates to date. We talk a lot about economies of scale, but the other concept is the economies of density. I'd like to explore that a little bit with you, because I think there is a general

consensus that there should be a rationalization at the distribution end in some way that makes sense.

One of the problems I see in southeastern Ontario is, how do you organize this — I think of your area as a good one, because once I get out of Kanata, I start to get into lots of geography, a declining number of actual customers. How do we deal with the problem of the economies of density, particularly in the areas outside the immediate confines of urban and suburban Ottawa-Carleton or Kingston or Brockville or Cornwall or Pembroke, and make sense of it?

My worry now is that Ontario Hydro has decided: "There's going to be rationalization, all right. We're going to do it." I don't know that that's everybody's — certainly I don't think that is what my constituents are hoping for out of this. They probably would like Kanata Hydro or Renfrew Hydro, some sense of local ownership and local accountability. But there are problems. One of the major problems is this economy of density. Everybody is going to want Kanata; everybody is going to want Arnprior. Lots of people aren't going to want the rest of the stuff in between because it's high-cost, low-revenue.

How do we get, let's say in this part of southeastern Ontario, a sensible, reasonable, affordable rationalization at the distribution end and deal with this problem of the economies of density?

Mr Cluff: That certainly is a delicate issue, and I think that probably leads back to the history of the municipal utilities in the first place. That was a socially significant, desirable reaction to have electrification of the entire province, and the municipal utilities undertook that, creating Ontario Hydro out of that process to handle the intermediate areas. I guess now we're stuck with, how do you bring it back the other way?

Mr Conway: But people like Mrs Johns and myself and Dr Galt, three here, represent a lot of people who are living in the countryside. They feel a right to reliable, reasonably priced electricity. I can pick as I want on Ontario Hydro, and I've done my share of it; they've got a million customers, a lot of whom other people don't want.

The problem with markets — the other day up in northern Ontario I didn't get a chance to say it. I forget who it was who came to us — it was one of the MEUs, I think — and said, "That rural rate assistance program should be paid for directly by a provincial government subsidy." That's unvarnished code for, "We recognize that there are substantial parts of this market that don't work, so you politicians write a subsidy for it; market if we like it, subsidy if we can't make it work."

As we found out in the ice storm, there are lots of people in this part of the province who are out in the hinterland. The Ottawa Citizen had an editorial here a few months ago that basically said, "Maybe we shouldn't have a reasonably uniform pricing policy." That will be big news to the people in rural Ontario. I need some help, because there is a real constraint called economies of density. How do we reasonably deal with this?

Mr Cluff: I don't know if I've got the answer for you. I'm also one who lives in the rural area and am subject to

the same uncertainty of where my supplier is going to be down the road. I really, honestly don't know. That's a question that needs some debate. Whether that's something that society still needs to provide for, whether there is something that —

Mr Conway: Could you people take over, for example, West Carleton, Goulbourn and Rideau? Would it make any sense to imagine an expanded utility on the south-western perimeter of suburban Ottawa-Carleton? Is it possible to imagine a scheme where you could have a rationalized utility offering good service at affordable prices?

Mr Cluff: Yes, I think there are opportunities to do that provided that you could maintain some rate differential.

Mr Conway: Of what order of magnitude would that differential have to be?

Mr Cluff: I can't tell you. I haven't looked at the numbers.

Mr Conway: Guess: 10%, 20%, 30%?

Mr Cluff: It's a difficult guess. Having worked for your previous speaker's Cornwall Electric, where they in essence do have that — they have a zone system because they look after a whole and part of another township. It was costed as a separate cost centre and therefore you can do the asset calculation and see what kind of rate of return you need and you can do those kinds of things.

Mr Conway: Do you know what their differential was within the Cornwall area zones? I'm just trying to get my —

Mr Cluff: I can't remember what it was.

Mr Conway: Was it 50%, was it 5%?

Mr Cluff: No, it was something less than 25%. I don't know.

Mr Conway: All right.

The Chair: Perhaps that's homework to do in a conversation.

Gentlemen, thank you. I apologize for those noises that were in the background beyond our control, but it gives you a sense of what question period must be like in the House at any rate.

Mr Conway: There's only one question period today, and it's in a federal court in Washington.

The Chair: Perhaps we'll be taking note later.

Gentlemen, thank you for bringing your best advice to our committee today. We appreciate it.

Mrs Johns: Just on a point of clarification, Madam Chair: I'm not sure I'm going to be answering Mr Lessard's question, but what we were trying to do with the legislation was, we were trying to work with the Ministry of Municipal Affairs on this 50% number that he brought up a few minutes ago. What I want everyone to understand, even with that 50% number in there, is that there are still licence qualifications that would say they cannot cross-subsidize, whether they be public or private. They still would be under the control of the Ontario Energy Board. So that is there, although we chose 50% as a benchmark for the selling, as you have indicated before. If

you have other questions about it, we'd be happy to try and get you the answers.

The Chair: All right, colleagues, that's our final presenter for today. We have not made taxi arrangements to the airport. We're going to assume that we will get

together in twos and threes and go together if we have phone calls and so on to make in the next little bit.

We will reconvene tomorrow morning at 9 o'clock in Samia. We are adjourned.

The committee adjourned at 1504.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Alex Cullen (Ottawa West / -Ouest L)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Also taking part / Autres participants et participantes

Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

Clerk pro tem / Greffier par intérim

Mr Tom Prins

Staff / Personnel

Ms Anne Marzalik, research officer, Legislative Research Service

CONTENTS

Monday 17 August 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson* /

| | |
|---|-------|
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, projet de loi 35, <i>M. Wilson</i> | R-211 |
| Regional Municipality of Ottawa-Carleton | R-211 |
| Mr Peter Hume | |
| Mr Paul Hughes | |
| Dr Bryne Purchase | R-216 |
| Industrial Gas Users Association | R-223 |
| Mr Peter Fournier | |
| Mr Alisdair Stark | |
| Public Interest Advocacy Centre | R-227 |
| Mr Michael Janigan | |
| Ottawa Hydro | R-231 |
| Mr Carl Kropp | |
| Municipal Electric Utilities of Renfrew County | R-236 |
| Mr Ron Lowe | |
| Mr Murray Moore | |
| Mr Tom Freemark | |
| Mr Rick Farrell | |
| Sierra Club of Canada | R-240 |
| Mr John Bennett | |
| Atomic Energy Control Board | R-243 |
| Dr Agnes Bishop | |
| Consumers Gas Energy Inc; Cornwall Electric | R-248 |
| Mr Perry Stover | |
| Mr Robert Winn | |
| Kanata Hydro-Electric Commission | R-252 |
| Mr Rick Shields | |
| Mr Guy Cluff | |



R-7

ISSN 1180-4378

**Legislative Assembly
of Ontario**

Second Intercession, 36th Parliament

**Assemblée législative
de l'Ontario**

Deuxième intersession, 36^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 18 August 1998

**Journal
des débats
(Hansard)**

Mardi 18 août 1998

**Standing committee on
resources development**

Energy Competition Act, 1998

**Comité permanent du
développement des ressources**

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



**Chair: Brenda Elliott
Clerk: Donna Bryce**

**Présidente : Brenda Elliott
Greffière : Donna Bryce**

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Tuesday 18 August 1998

Mardi 18 août 1998

The committee met at 0900 in the Best Western Guildwood Inn, Sarnia.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

WEST LAMBTON ELECTRIC UTILITY
RESTRUCTURING STEERING COMMITTEE

The Chair (Mrs Brenda Elliott): Good morning, everyone. We are in Sarnia this morning. We've had excellent presentations in the week and a half that we've been on the road and we're looking forward to more enlightening, energizing advice today and in the next couple of days.

Our first presenters this morning are representatives from the electric utility restructuring steering committee for West Lambton. Good morning, gentlemen. As I'm sure you know, you have 30 minutes for presentation time. We always hope you'll leave time for questions from the three caucuses. If you would begin by introducing yourselves or the Hansard record.

Mr Robin Moore: On my left is Dick Kirkland, who is the vice-chair of the Point Edward Public Utilities Commission, and on my right is Mr Doug Darrach, chairman of the Petrolia Public Utilities Commission. Good morning, Madam Chair and members of the resources development committee. My name is Robin Moore, and I am chair of the Sarnia Hydro-Electric Commission.

My colleagues and I are here today representing the West Lambton Utility, which is the proposed amalgamation of our utilities plus that of Moore township. In Sarnia and Lambton county we not only endorse the direction of Bill 35, but we have also pressed forward in a joint effort to support one of its key objectives: the amalgamation of

neighbouring utilities to provide ratepayers with the benefits of the resulting economies of scale. The purpose of Bill 35, "to create jobs and protect consumers by providing low-cost energy through competition," is embraced by our members.

In 1995, officials from these municipalities and utilities understood the benefits of a combined distribution utility and worked diligently towards achieving this objective. On June 22, 1998, after completing very extensive studies, a private bill, Bill Pr8, An Act to Establish the West Lambton Electric Commission, was introduced into the Ontario Legislature by Mr David Boushy, MPP, Sarnia, and received first reading. For those familiar with Bill Pr8, it will be apparent that our objectives are also represented in Bill 35, and this has only strengthened our support of Bill 35.

It is the intention of this panel to demonstrate its total support for Bill 35 and to facilitate its implementation in a timely and coordinated fashion to the best of our ability in Lambton county.

Some of you may be aware that a number of us in this area had expressed concern about the lagging position of our industry as a result of increased electricity costs in the late 1980s and early 1990s. As a result of this concern, Sarnia Hydro, as part of a larger group of utilities in the province, aggressively intervened in the 1996 Ontario Energy Board hearing with Ontario Hydro, HR24, to articulate our concern about the need for competitive rates in the electricity sector. Today, West Lambton Utility views Bill 35 as the assurance that in the future our ratepayers will benefit from competitive rates and that our communities will benefit from job creation and capital investment.

West Lambton Utility and its individual members have supported this government's initiatives in reforming the electric industry in Ontario. From the encouraging report of the Macdonald task force, A Framework for Competition, in 1996, to the issuing of your white paper Direction for Change: Charting a Course for Competitive Electricity and Jobs in Ontario, in 1997, to the introduction of Bill 35, the Energy Competition Act, this year, we have been preparing for a competitive market for several years. To better understand our determination, I refer you to Sarnia Hydro's 1997 annual report, where our efforts are summarized for the benefit of our ratepayers. I have provided adequate copies of this report and I encourage you to read it to better understand our position.

We feel it is impractical for us to try to address any more than three points in the legislation, in the interests of time and fairness to others. Nevertheless, a number of points that will be made by others are also supported by West Lambton Utility.

For example, in the following presentation, Moore township representatives will explain to you the difficulties they are experiencing in acquiring a distribution system to enable them to participate in the amalgamation of the distribution systems with Sarnia Hydro, Petrolia PUC and Point Edward PUC. We support their position in that the proper authority should be granted to the IMO or the OEB to mitigate the market power of Ontario Hydro retail.

Similarly, you will hear from other stakeholders in our communities of the need for supporting legislation to allow a major new cogeneration project in our area to proceed and for that project to demonstrate that jobs can be created and that consumers can be protected by promoting low-cost energy through competition. We support their views as well.

Specifically, West Lambton Utility recommends to this standing committee that Bill 35 can better meet its objectives by ensuring the following three points are properly addressed:

(1) The distributor's affiliate, which is owned by a municipal corporation and set up to provide competitive retail services, should have the same flexibility to operate in its markets as its competitors, it should have the ability to respond to its customers' demands and to pursue the same activities as its competitors, and it should also have the same ability as gas and electricity marketers to enter into contracts.

(2) The collection of the stranded debt should be assigned in such a way that it becomes a fixed monthly charge per customer class, as opposed to a consumption charge per kilowatt hour that will act to stifle growth.

(3) It should be the intention of Bill 35 to treat amalgamations between municipal electric utilities and Ontario Hydro retail utilities in the same manner and fashion and with the same provisions as amalgamations between municipal electric utilities.

Let me explain the first point. We believe it is critical for the distributor's affiliate, which is owned by a municipal corporation, to be able to compete on a level playing field. Currently, under the provisions of Bill 35, the distributor's affiliate is restricted to electricity-related businesses — section 72, Ontario Energy Board Act — and the affiliate is prohibited from supplying its customers with the type of services and products they demand in the same fashion that competing retailers are capable of providing.

West Lambton Utility is seeking clarity on this point. If it is the intention of the legislation to provide a level playing field, we recommend that the wording be changed in the legislation to more clearly set out the unrestricted ability of the distributor's affiliate to compete.

As an example, under the current provisions of Bill 35, the distributor's affiliate, which is owned by a municipal

corporation, could not enter into an activity such as the provision of a combined electric and water billing to its customers, despite the fact that this activity may be a core competency of that distributor's affiliate. Such restrictions impair the ability of the distributor's affiliate to compete evenly with other suppliers and limit the benefits to its municipal owners.

Further to this same point of a level playing field is the fact that contracts entered into by the distributor's affiliate should be treated in the same manner as contracts entered into by power marketers. Bill 35 provides that contracts entered into by distributors and their distributor's affiliates are not in force on the day that open access is proclaimed — Electricity Act, subsection 25(4). Gas and electricity marketers are currently signing customers by making offers that are unavailable to municipal electric utilities. It is the position of West Lambton Utility that there should be equal treatment for both participants.

The ability of the distributor or the distributor's affiliate to negotiate power contracts between now and the day that open access is proclaimed is essential. Large marketers, some of which are foreign, are currently offering power contracts to selected customers while distributors and their retail affiliates cannot. This can only ensure disparity between the rates that their respective customers will receive.

0910

Early entrants in this market will unfairly be able to select customers whose service costs are lower and thus be able to offer a more competitive rate for power, whereas the last entrants into the market will be left with customers whose cost of service is higher and as a result will experience a higher end rate. In simple terms, the diversity advantage will only benefit the early entrants into the market. It is our recommendation that this inequity be addressed in Bill 35.

Secondly, I would like to put forward the concerns of West Lambton Utility on how the stranded debt is recovered from the competition transition charges. It is critical, in our view, that consumers see their end rates as fair and that incremental consumption is encouraged in the system.

West Lambton Utility agrees with sections 83 to 88 of the Electricity Act that set out that the stranded debt be recovered through the competition transition charges to generators and consumers. It is the opinion of West Lambton Utility, however, that the stranded debt, which is defined as that part of Ontario Hydro's financial obligation that cannot be recovered through its assets once its monopoly has been removed, be assessed to the consumer in the form of a fixed monthly charge per customer class.

It is inappropriate to collect a fixed stranded charge through a consumption tax, as it will encourage fuel switching to other energy sources. It is the opinion of West Lambton Utility that a fixed monthly charge per customer class, at the meter and collected by the regulated distribution company, will behave as a rate reduction and will encourage growth in the electrical sector, creating both capital investment and jobs. It is a position that can

be supported by all customers, as all customers benefit and are not surprised by unexpected costs.

Contrasted to this is a consumption charge where the more a customer uses, the more he pays. Thus, to avoid paying his fair share, a customer currently using electricity for a process or for an appliance will switch that process or appliance to another fuel. The result is that the recovery period for the stranded debt will be extended and overall consumption will drop, thereby discouraging investment and jobs and potentially creating a less efficient infrastructure.

In the early 1990s, the electricity industry in Ontario suffered high load losses due to fuel-switching activities from electricity to natural gas. This resulted from the fact that consumers viewed the kilowatt hour cost of electricity to be too high. The industry will be at similar risk, after open access, if a consumption charge is imposed, thus limiting Bill 35's effectiveness in providing job creation and consumer protection through the provision of competitively priced energy.

To illustrate why a fixed monthly charge per customer class is essential, please consider the example of a customer who owns an electric water heater. If the customer is assessed a fixed monthly charge, he or she has no economic incentive to switch water heaters. If, however, the recovery of the debt was a kilowatt hour consumption charge as measured at the meter, the customer could simply replace the electric water heater with a natural gas water heater and avoid incurring the charge because he or she reduced his or her consumption. This fuel switching could become widespread and would have the effect of unfairly switching the debt burden to others, extending the pay-off period of the stranded debt and reducing total consumption province-wide, which discourages the creation of jobs and investment in the electricity sector.

My third and final point concerns the intentions of Bill 35 regarding amalgamations. You will hear more of this concern from Moore township following this presentation. West Lambton Utility is concerned about Bill 35 on this issue. In section 130 of the Electricity Act and section 84 of the Ontario Energy Board Act, 1998, Bill 35 permits the amalgamation of two or more municipal corporations. We cannot see, however, any reference to amalgamations between municipal corporations, ie, municipal utilities, and Ontario Hydro retail utilities.

As stated earlier in this presentation, Moore township, which has established a municipal electric utility, is currently seeking to acquire control of the distribution assets from Ontario Hydro to join with this amalgamation of the distribution systems of Sarnia, Point Edward and Petrolia to form the new West Lambton Utility that we are representing here today.

As West Lambton Utility, we are seeking clarity on the intention of Bill 35 on this point. If it is the intention of Bill 35 to treat amalgamations between municipal electric utilities and Ontario Hydro retail utilities in the same fashion as it treats amalgamations between municipal corporations, ie, municipal electric utilities, then it would

be the expectation of West Lambton Utility that Moore township will be a part of our new utility and that substantial savings can be realized and competitive rates achieved. If, on the other hand, these amalgamations are treated differently, it will impose barriers to Bill 35's ultimate ability to create jobs and to provide consumer protection by impeding its ability to provide competitive rates.

In summary, let me assure you that all members of this panel applaud this legislation. It is our hope that our recommendations will be viewed positively and that they will provide even greater benefits to Bill 35. Again, let me assure you that we are most anxious to help move this legislation forward and offer our services to you in this regard.

Thank you for the opportunity of addressing this committee on this important legislative initiative. We will be pleased to answer any questions, provided they are easy.

The Chair: Not a chance. Colleagues, we have four minutes for questions from each caucus. We begin with the government and Dr Galt.

Mr Doug Galt (Northumberland): Thank you for the presentation. I'm intrigued with your second recommendation and struggling a bit with understanding and being clear on it. Where I'm coming from is what happened with Ontario Hydro a couple of years ago when they upped the rate for farmers who had a second barn or third barn or service.

We'll look at Moore township, and we're on concession 4, lot 20. Mr Smith is there with a big farm and he's getting this customer class charge. A mile down the road he has another barn and all he needs is lights to feed the steers at night. He uses nil kilowatts. If you're suggesting that at both locations he would pay a full charge for this, it's going to be a very tough sell to Mr Smith to have these two charges, unless you consider that as one customer on two locations. He might have four locations, and in another place he may have a pump that he needs to pump water for cattle or something. How do I sell that idea to Mr Smith?

Mr Moore: You're assuming there that both of them are in the same class. It could be that they're not in the same class. I suppose the farmer who is only feeding his herd might be in a different class than the man who has a grain elevator and other higher consumption.

Mr Galt: My understanding is that you were putting an amount on each class, but whether it's in class 1 or class 5, there's still a charge for class 1 and a charge for class 5, rather than a few cents on each kilowatt. When he uses only a few kilowatts he would only be expecting to pay a few cents on the stranded debt, and on the big farm he would be paying a significant amount. How do I explain to him he's got to pay two times X or three times X?

Mr Moore: Again we're assuming he's in the same class. In any class there's probably always going to be someone who's unfairly treated. I think that's a fact of life. If they're in the same class, they would pay the same.

I really can't answer other than that the classes would have to be different.

Mr Galt: Because he would have a small service on a small barn, he's still going to get caught in the same —

Mr Moore: He might be a different class than the other one. I think the government is going through problems right now with property tax. It could very well be the same type of problem. We still feel that the class system is better than paying on consumption.

Mr Galt: It's just a unique —

Mr Moore: Yes, that's right.

Mr Galt: We hadn't heard this one before.

Mr Moore: Probably there will be exceptions to all of these classes, but we still don't feel that it should be a consumption tax. It should be a class-type tax.

Mr Galt: Do you have any gut feeling on how many classes there should be?

Mr Moore: No, I don't. I'd be glad to sit on a committee to help figure that one out, though.

0920

Mr Sean G. Conway (Renfrew North): Thank you very much, gentlemen, for a very helpful presentation. I want to come back to the point Dr Galt was just pursuing from a slightly different way. The bill and the attendant policy on the relief of the stranded debt, whatever it is, contained a menu of possible instruments. It's pretty clear, I think, from the Ministry of Finance officials that the last item, the least attractive of the options, is the CTC charge, the competition transition charge. Assuming that's the one we want to use last for a number of reasons which have been advanced in this committee, there are then four or five other charges possible. Thinking about fairness and efficiency, what would your recommendation be as to how a prudent policy-maker should select from the other five? You know what they are. I can read them if you want.

Mr Moore: Refresh my memory.

Mr Conway: Set out in the bill is the competition transition charge, which was the one we talked about earlier. It will be the payments in lieu of federal and provincial corporate taxes, which will be imposed on Servco and Genco to level the playing field. There will be other payments presumably imposed on the commercial companies, Servco and Genco, of dividends and other things. There will be payments in lieu of additional municipal and school taxes. There will be MEU transfer taxes. My favourite is the provincial slice of the adjusted gross revenues annually and in perpetuity of the municipal utilities. Those are the other five.

Thinking about issues of parity and efficiency, what would the proper mix be? If you had to make a casserole from those fixings, how would you make it?

Mr Doug Darrach: On the one issue, in regard to the taxes and those fees put on Genco, the one concern we had was to make sure that Ontario Hydro generating plants, the nukes, those sort of things, got the same amount of debt put to them so that it didn't make an uneven playing field for the new energy sources coming in like Genco. We had a feeling that if Genco was put with a greater portion of the stranded debt, they would be left producing hydro at

a greater cost than, say, the nukes would be because the nukes were the ones that created most of the stranded debt. We didn't really see that in regard to creating new enterprises and new jobs in this area. That was an option that didn't look very promising to us.

Mr Conway: My concern is that we're going to have a debt of some kind and it's going to have to be paid out. It's not going to be pleasant, but it's got to be done and it's got to be borne fairly by all classes. In Ottawa yesterday we had some evidence tendered by a public interest group which took us through some of the telecommunications, from their point of view, the restructuring of the telecommunications sector in the last number of years. If you were a bit skeptical, you'd say, "Well, the big boys got more benefits earlier than the broad class of general customers."

My worry about this menu is that a couple of them may impact unfairly on residential electricity customers in your part of the province or in mine for a variety of reasons, not the least of which is the MEU payment, what I call the adjusted gross revenue payment, and what I'll call the dividend payment from Genco and Servco. When the stranded debt is paid off, under the language currently in this bill, those payments continue to the credit of Her Majesty's provincial treasury.

I don't mean this as a criticism of the current government, but if I were a finance minister, let me tell you, I would be very interested in those two items, because when the stranded debt is paid, all of a sudden I have got myself a very nice dedicated revenue stream, ostensibly to level the playing field tax-wise, but, boy, I'm the finance minister and I've got myself new tax revenues that would be substantial. I'm going to guess that the MEU payments, the annual slice of the gross revenues of all municipal utilities, would give me hundreds of millions of dollars with not a very large percentage. Is that a concern, as far as you're concerned, with your electricity consumers?

Mr Moore: Anything that's going to increase the cost to our consumers is a concern. We only had a chance today to talk about three points. That's one that certainly is in the bill, but we did not address that.

Mr Conway: But your second point —

The Chair: We must move on.

Mr Wayne Lessard (Windsor-Riverside): You would agree with me that at some point we're going to have to determine this number for the stranded debt. There may or may not be something that's referred to as the residual stranded debt. Part of the issues we're trying to deal with is how to allocate the payment of those two amounts in a way that's fair and reasonable.

I'm assuming that at the current time you probably have a rate structure that treats different consumers differently. Would I be correct in that?

Mr Moore: Yes.

Mr Lessard: How many different classes do you have now, or is that how you divide them up?

Mr Moore: I can't really answer that. Four.

Mr Lessard: I would further assume that's probably based on consumption. You have larger consumers that have a different rate than your residential consumers and probably the largest consumers would have the lowest per kilowatt hour rate.

Mr Moore: Yes.

Mr Lessard: To take that further, when we're talking about dividing up rate classes for the payment of the stranded debt, my concern isn't that small residential consumers are going to look at their bills and consider appliance switching, but that large industrial consumers are going to be looked at by residential consumers saying, "If you guys are getting a break, then I'm going to be the one who's going to have to pick up the slack." That's my concern. If residential consumers are going to see their rates rise disproportionately to large consumers to cover the stranded debt, I think it might be more likely that residential consumers would be switching appliances like hot water heaters, for example.

Mr Moore: Do you mean if it's charged on a consumption charge?

Mr Lessard: You said that your rate classes are connected with consumption because a person who consumes the most has the lowest rate.

Mr Moore: I'm not just sure —

Mr Darrach: But it doesn't mean that the distribution of the stranded debt would go that way. It may mean that the large corporations are able to have a surplus in their usage. They may get charged higher amounts for stranded debt and the consumers on the home front would get a lower portion of that, because in regard to the amount they're using it's less. The creation of the debt was probably to the benefit of the large corporation as opposed to the individual home user. They haven't received the benefit. Maybe now it's time that the larger corporations pay the larger portion of it.

Mr Lessard: So you're actually suggesting that larger industrial consumers may pay a larger portion towards the stranded debt.

Mr Darrach: Yes.

Mr Lessard: Interesting. Do you currently offer water services?

Mr Darrach: We do in the town of Petrolia, yes.

Mr Moore: In Sarnia we don't.

Mr Lessard: But you offer the billing services in Sarnia. Have you considered getting into gas distribution as well? Yesterday we heard from Cornwall and they're doing combined services there. The choice about switching wouldn't be as big a factor if you were involved in that. We'd just be talking about energy.

Mr Moore: If we took over the local gas distribution, I suppose that's right. I'm not sure how practical that is at the moment, but it's a good point.

Mr Lessard: But you see restrictions in Bill 35 as far as being able to not only amalgamate, but also offer the same services that you currently offer in all of the areas where you have service. Thanks.

The Chair: Gentlemen, we appreciate your starting off our morning here in Sarnia. Thanks for bringing your best advice to us.

0930

Mrs Helen Johns (Huron): Madam Chair, just as a point of clarification: There are two things I think we should clarify. In the act, it does not preclude Servo and the MEUs from negotiating. There is no section that precludes that, so that could happen.

Secondly, in response to Mr Conway's prelude, it's certainly not our intention to use the CTC for stranded debt costs, but we have not precluded using the CTC costs for residual stranded debt.

The Chair: We have air conditioning in this room today and periodically you'll hear it come on and off. It's very loud, so I would encourage everyone, and that includes our guests, to pull their mikes close to them so their voices can be picked up. It is hard to hear. I can see the audience is straining as well.

Mr Conway: I wonder if it's possible to operate without the air conditioner. Would this place become as stuffy as the map room in short order?

The Chair: We've been experimenting with that, but we do have to go through this all day.

MOORE TOWNSHIP HYDRO ELECTRIC COMMISSION

The Chair: Our next presenters are representatives from the Moore Township Hydro Electric Commission. Good morning. Welcome to our committee. We're pleased that you're able to join us today.

Ms Jane Marsh: We're very pleased to be here also, and good morning. To the members of the resources development committee, my name is Jane Marsh. I am the chairperson of the Moore Township Hydro Electric Commission. Sitting with me are members of our commission, Charles Bailey, Charles Nisbet, Stan Campbell and our mayor, Chris Muller. We also have our secretary, Don Loughheed.

I've met some of you before in my previous life as the mayor. Mr Conway, I was pleased to be up in your territory plowing at your international plowing match. That was a great place to be at that time of the year.

However, we're here to talk about electricity and Moore township's frustration at trying to work towards a better system. I would like to confirm that in general our commission supports most of the initiatives included in Bill 35. These initiatives are largely consistent with the efforts of Moore township, like the province, to change the current electrical supply arrangements.

I'm going to have to go into a little history here in order for you to understand why we're here and why we're so frustrated. The Moore Township Hydro Electric Commission was officially formed in 1997 and we have yet to receive control and management of the supply facilities within the township of Moore from Ontario Hydro. By the way, the township of Moore is just south of Sarnia. We have a very large corporate entity and 50% of our assessment is paid by the corporations. We have three Nova plants, Shell, Lambton generating, Ethyl, Dupont. We're a healthy community.

The forming of the commission followed all legal and historical precedents, including an election and a referendum. We have found, therefore, Ontario Hydro obstructionist in surrendering said control and management to our commission. Our efforts to provide local control and management of electrical supply commenced well before the introduction of Bill 35, and further, significantly prior to the government of Ontario white paper issued in 1997. Our activities go back to early 1995, and attached, when you have a chance to go through our submission, you will find the procedures that were followed and the dates.

We initiated discussions in 1995 with Sarnia Hydro and other municipal electric utilities regarding the establishment of a combined municipal-controlled electric utility, West Lambton Electric Commission, which you have just heard from.

Subsequent studies prepared for us by our consultant indicated that the savings to the residents of Moore township could amount to a minimum of \$2 million over a five-year period. While reliability of service from Ontario Hydro has never been an issue, given the potential savings, a view to economic growth and desirability for local control of the management and works, we decided to pursue establishing the Moore Township Hydro Electric Commission.

In November 1995, we wrote the then president of Ontario Hydro, Dr Kupcis, requesting advice on how best to set up our hydro commission. Based on his response, we requested an inventory of the plant within the township of Moore from Ontario Hydro. The inventory would be completed and the cost available, we were told, by the end of September 1996.

In the last half of 1996, we advised the Minister of Energy and Environment that we had decided to form our own utility, passed the necessary bylaw to establish our own commission, and proceeded with establishing a cost contract for the supply of power. We advised Ontario Hydro of these activities and requested system separation costs from them.

On February 13, 1997, the Ontario Hydro secretary and general counsel advised our commission of the need for a referendum to complete the requirements to establish a cost contract. Of course, on election day the residents of Moore township, by referendum, approved entering into an agreement with Ontario Hydro to purchase energy from Ontario Hydro and agreed to pay the asking price, which we'd been given by that time.

In December 1997, following establishment of our commission, we wrote Ontario Hydro requesting transfer of control and management of the works effective January 1, 1998. On January 12, we again wrote Ontario Hydro requesting their response. Ontario Hydro has continued to delay and procrastinate, despite their ongoing encouragement in specifically setting out each of the requirements for Moore township to establish a cost contract supply.

We have acted in good faith, complied with all the requirements and Ontario Hydro suggested activities, including the referendum, and we have accepted the price that was given to us at that time, which was book price,

book value, of \$4.7 million. We have incurred several thousand dollars of expenses at the suggestion of Ontario Hydro and yet still are being frustrated by them.

On June 24, 1998, we met again with Ontario Hydro with the view of establishing the utility post-haste. Despite all our efforts and following all the conditions laid out by Ontario Hydro, they have now informed us that the rules have changed, and instead of the \$4.7 million we accepted, the price is now in excess of \$15 million. They have advised us that this new price represents market value for the assets and that they are unwilling to proceed with the transfer under the former rules of existing statute. The \$4.7 million is based upon the residual debt associated with the facilities within our township.

The committee should be aware that Moore township formerly had owned and operated electric utilities within its geographic boundaries. They included Brigden and Courtright hydro systems. When these assets were transferred to the Ontario Hydro retail system, they were done so on the basis of residual debt at zero cost to Ontario Hydro. While we are not seeking a zero price from Ontario Hydro, it is reasonable for us to reacquire these areas and in fact the entire township on the basis of residual debt quoted to us by Ontario Hydro at the \$4.7 million on April 21, 1997.

The foregoing historical background on our attempts to establish the Moore Township Hydro Electric Commission is a concrete example of Ontario Hydro's abuse of power. Surely their actions could be construed as acting in bad faith. In Bill 35, it is extremely important to give the Ontario Energy Board, the independent regulator, the powers it will need to protect consumers. Had the OEB been in place with mitigating powers, perhaps our situation could have been settled with a satisfactory conclusion for the residents and hydro customers in Moore township.

0940

You will be aware that Moore township has been meeting with its neighbours to establish the West Lambton hydroelectric utility. Under Bill 35, existing utilities will be able to amalgamate in order to continue their business in a more economical and competitive fashion. However, should Ontario Hydro be successful in stonewalling our efforts — and it's pretty obvious that they've done a good job so far — Moore township will be excluded from participating in the West Lambton Hydro Electric Utility initiative, because Bill 35 does not provide for the formation of new hydroelectric commissions. This will result in our residents missing the potential benefits of such a merger. One must wonder again if it is Ontario Hydro's way of keeping the large hydro users within Moore for themselves.

Bill 35 clearly and appropriately grandfathers the Bill 185 municipalities. The test in Bill 35 appears to be which municipalities passed bylaws prior to the June 9 introduction of Bill 35, when the rules clearly changed. Not only have we passed a bylaw but we have completed a successful referendum and requested a transfer of control and management of the works at the price offered by Ontario Hydro, all prior to 1998. It appears that Moore

township is being subjected to a higher standard than other municipalities in Ontario. Ontario Hydro's current position is clearly in conflict with the government's policies.

Before closing, one additional item that is of great concern to all our residents, commercial users and industries: We agree with reassessment within Ontario and particularly with Ontario Hydro properties such as the large hydroelectric generating station in Moore township. In the past, the payments in lieu of property taxes have not been fair in comparison with other assessments within Moore and in comparison with other industrial properties. We urge you to include in Bill 35 the provision that all Ontario Hydro properties pay municipal taxes to the municipality based on fair market value as established by the province of Ontario. Moore township should not be penalized by paying twice — once for the individual stranded debt and once by not receiving the proper municipal grant in lieu of taxes. It is just not fair.

In conclusion, while we accept the need for change, we ask the committee to include in Bill 35 a requirement that Ontario Hydro complete its obligations to transfer the customers and works at the April 21, 1997, price and enter into a cost contract with Moore township under the existing statute. Or we need to be grandfathered as a Bill 185 utility, section 83 of the PCA, and order Ontario Hydro to enter into a transfer agreement and an electricity supply contract with us at the agreed-upon price.

Ontario Hydro should not only pay corporation taxes like any other utility and corporation, but should pay municipal taxes just like any other utility and corporation.

This request is duly submitted for your consideration and approval. We hope we're able to answer your questions. We are the new kids on the block and we'll try to answer them.

The Chair: We have five minutes for each caucus. We'll begin with Mr Conway.

Mr Conway: Thank you, Ms Marsh and colleagues from Moore township. It's very good to see you this morning.

Let me get to the essential question here as far as I'm concerned. One of the expectations of this policy that's widely endorsed is that there be a rationalization of the distribution system, particularly in southern Ontario. I was just looking again at the Macdonald committee, which reported in May 1996, and on this subject they were absolutely clear, as have been most other people who looked at this, and said, "Listen, the world of Ontario Hydro retail and 275 or 300 MEUs in this province has got to change." There is 15% of the consumer's bill which elates to distribution. There are obviously some efficiencies that can be gained there, in addition to which presumably a wider range of perhaps improved services at the same time. I think that's a given.

I was quite frankly concerned to hear your testimony because it seems you have been working for two and a half years to do what we all want to have done. How would you characterize the change in attitude from Ontario Hydro in the course of that two and a half years, say, from the early period in the winter-spring of 1995 to

the spring of 1997? For example, on the valuation of assets, there appeared to have been a significant change along the road. What occasioned that change of attitude as far as you could tell?

Ms Marsh: First of all, I would say the attitude went from bad to worse. We have had just a terrible time communicating with Ontario Hydro. Of course it isn't Ontario Hydro's fault that every time we communicate, it's a different person — that goes with the territory — but it's just like pulling teeth getting any information out of them. We would request information and figures and we would wait months to get those figures.

Mr Conway: But they obviously changed their position on a critical question. I would assume that the appropriateness or the appeal of rationalization is going to turn, in some considerable measure, on how you treat and how you value the assets, moving in your case, let's say, from Ontario Hydro retail to the hydro commission of Moore township. In the space of a relatively few months, Hydro went from asking \$4.7 million to \$15 million, a threefold increase. Is the proposed creation of your new structure really badly damaged, perhaps scuttled, by that change in valuation, or is it a problem but you could manage it?

Ms Marsh: We've looked at it seriously and, first of all, the savings won't be there for our customers. The savings won't be there to merge into a West Lambton situation. I'm not sure they're going to want us at \$15 million compared to \$4.7 million. Certainly I can understand where we've gone from book value to market value, and things have to change, but we're caught in the middle of all this. I don't have a problem with market value in the new bill, but just let us get from where we were to where we'd like to be. Because we've been caught in the middle, don't penalize us.

Mr Conway: You're not the first group that's made this submission. We had a submission from learned legal counsel last week someplace, I think Sudbury, the Aird and Berlis —

Mrs Johns: Thunder Bay.

Ms Marsh: We've met with them all.

Mr Conway: He was representing a dozen or 15 MEUs.

Interjection.

Mr Conway: Sorry, I didn't bring his brief with me today. Thank you, Mr Lessard, for reminding me that he may be known to these deputants.

He made it very clear in his submission that there are impediments in the bill as currently written or factors that are going to be barriers to prevent the expansion naturally of franchise areas like yours. Of course we got into this big debate about the attitude. The way the bill is currently written, Hydro has the upper hand in that the time lines are such that they just need to sit there and be difficult or obdurate or non-communicative and after a while they will win simply by attrition. That has been your experience, I take it.

Ms Marsh: Yes.

Mr Conway: On the market value question — and one of my colleagues, Mr Gilchrist, will undoubtedly pursue this — one of the issues here has to be some fairness and equity. If I were a customer out in Moore township, particularly if it was going from one part of the public sector to the other — I think I would have a different view if it was a transfer out of the public sector to the private sector, but that's a debate I'd probably want to think a little bit about — would it be the view of people in Moore township that they shouldn't be paying twice? If we're simply talking about the distribution of assets of Ontario Hydro retail that they have paid for over the course of however many decades, they would not consider it a fair transaction, that if as it moved from one part of the public sector, namely Ontario Hydro, to another part of the public sector, Moore Township municipal PUC, they shouldn't essentially have to pay some kind of transfer tax or other special charge that was effectively going to mean double payment for the assets and an effective increase or surcharge on their electricity rates.

Ms Marsh: You make a very good point. I think it would be wonderful if Ontario Hydro transferred the assets to us at zero cost.

0950

Mr Conway: I'm not saying zero cost. I'm not saying that, but my concern is very simple. There has to be fairness.

Ms Marsh: Yes.

Mr Conway: We can't be giving, you know, sweetheart deals to anybody. What my concern is —

The Chair: I'm sorry. To be fair, we have to move on.

Mr Conway: I'll conclude. My concern here is that I don't want a policy that effectively says the only rationalization we can really get is one in the name of Servco, because Macdonald and others said the rationalization, particularly in southern Ontario, on the distribution side should go the other way, it should go down to locally based municipal utilities. If we end up with a policy that effectively creates significant reductions and rationalization on the distribution side in favour of Ontario Hydro retail, I don't know that that's what customers in Moore township or the Ottawa Valley expect out of this policy.

Ms Marsh: No, and you're right.

Mr Lessard: I'm just going to follow up on that and be brief, because I look forward to Mr Gilchrist's debate with you further about the issue of the pricing of the assets.

You're not the only people having difficulty communicating with Ontario Hydro. We've been throughout the province and have heard example after example of people who called the 1-800 number after the billings were changed, and I'm sure the people in Moore township weren't alone in having difficulty getting through to the 1-800 number as well.

I just get this sneaking suspicion that part of the reason Ontario Hydro was stalling in its negotiations with you, or the completion of the agreement — I guess the negotiations had already been concluded — was because they really knew something you didn't. They have been

involved in consulting with respect to the drafting of the legislation and were I think just stalling in anticipation of the bill being introduced. One of the things you suggested is that Ontario Hydro's current position is clearly in conflict with the government's policies, but do you really think that? Maybe they're both in sync. Maybe it's possible that they're both going in the same direction.

Mrs Johns: Maybe we didn't consult with anybody but Hydro.

Mr Conway: I want to know if Ontario Hydro —

The Chair: Order. We have guests who want to answer. Please go ahead.

Ms Marsh: I need to ask you again, what is your question?

Mr Lessard: I'm just wondering if you think there really is a conflict between Ontario Hydro and the government's policies, or is it possible that there isn't a conflict?

Ms Marsh: From our viewpoint it looks like a conflict. I hope things would move ahead a little better and a little easier for people like us. You say there are others like us in the same position. If we're grandfathered in Bill 35, we're able then to work through this with the present rules, which are book value. That's all we're asking. We can work through it as soon as we're formed. I think Ontario Hydro made the statement to us, "We're afraid that as soon as you're formed you're going to flip it, you're going to sell it," and we have said: "No, we're there for our residents. We're there for our customers." We know we're going to put it into the West Lambton Utility because a larger utility is going to have more efficiencies. We're going to work better together. We're all in this Chemical Valley together. We can do a good job for our customers if we're together.

Mr Lessard: Perhaps there are some restrictions that we could put in the bill as well about flipping the assets or making it subject to Ontario Energy Board approval. Are those suggestions that you think would be reasonable?

Ms Marsh: Yes, we would certainly agree to that.

Mr Lessard: You've certainly given us a vivid illustration of what the future may hold for others who may want to follow a similar course to what you've followed, and it really isn't very optimistic.

Ms Marsh: It hasn't been, no.

Mr Lessard: I can't imagine other people wanting to follow the same course that you've followed, and if they're not going to, that really leads me to wonder whether there will be a big change. If there is a change it may be the other way, Ontario Hydro actually leading the rationalization efforts and not the municipal electric utilities or municipalities.

Mr Steve Gilchrist (Scarborough East): Thank you, Ms Marsh. I appreciate your presentation here this morning. It must bear stating on the record that it hardly was private meetings with Ontario Hydro that were the inspiration for what we're doing here today. Mr Lessard has seen the list of the literally hundreds of meetings with dozens and dozens of organizations that have taken place. I'm sure people from your neck of the woods have been

involved as well, as have people from every part of the province in all aspects of electrical production and consumption.

I'll surprise my colleagues opposite by saying I have some considerable sympathy for your position and one of the things is that we're going to have to go back to get a legal answer on the relative ranking of Pr8 versus this bill and whether there's a need to put something extra into Bill 35 or just pass Pr8, whether that has the same effect. We'll certainly make those inquiries before matters proceed to their conclusion.

I would like to explore the issue of pricing with you a little bit because of what I see as a contradiction in your own presentation here. The issue of whether you get it for \$4.7 million or \$15 million that I think you've put on the record relates to the fact that Hydro now is charged, if they dispose of any of their assets, with recovering something towards the stranded debt. Would you agree with me that every dollar they mark something down increases the debt that's left? I mean, conversely, the more money they bring in, the more money they make, the less debt they would have. Would you agree?

Ms Marsh: I hope so, yes.

Mr Gilchrist: I'm not trying to trick you or anything, just as a philosophical concept here before moving into the question. So that I don't think is anything people would disagree with. Forty per cent of the cost from Ontario Hydro is debt service. That doesn't go away when this bill passes. That's still a debt that every taxpayer in Ontario has guaranteed. How we recover it may be open to some debate, but it must be recovered.

On the one hand, if you do get the assets for the lower cost and no money goes against stranded debt, we then have the contradiction of your issue of taxation, because — and I hope it's been pointed out to you — the higher assessment will be charged but the difference between the \$86.11 per square metre that you're collecting right now and the full assessment will go towards paying the stranded debt.

Ms Marsh: Right.

Mr Gilchrist: So contrary to your presentation, you must have one or the other. If you get it for \$4.7 million, then somebody in Moore township somehow has to pay their fair share, and I think at the minimum the ongoing payments towards the stranded debt in the form of the difference in assessments — something you've never had before. If I may be so bold, municipalities weren't knocking on anybody's door saying \$86.11 was inappropriate before this bill came up.

Ms Marsh: We did.

Mr Gilchrist: Well then, you're the exception, because no one's ever written to me at municipal affairs on this matter in the two years I've been there. Would you not agree with me that the people in Moore have an equal share with the rest of the people in Ontario in somehow making their contribution towards paying down the debt?

Ms Marsh: But I believe that the people of Moore township will be paying their share of the stranded debt once you figure out how to do it, whether it's on the hydro

bill or the usage or whatever. Therefore, again, why are we paying twice? We should be paying book value. If we pay market value, we're paying more than our share.

Mr Gilchrist: On the assumption that you haven't done that, you still seem to have, if I read your report correctly, a problem with the concept that the difference between \$86.11 and full assessment goes towards the stranded debt, or am I misreading you there?

Ms Marsh: No. I think the point I should have highlighted was that we believe municipal taxes should be paid to the municipality, that 100% taxes should go to the municipality. Then maybe there should be a way that the government can take back from the municipality that share of the stranded debt, if that is a fair way of doing it. I like Mr Conway's word "fairly."

Mr Gilchrist: It sounds like a bit more bookkeeping. A very quick final point —

Ms Marsh: It should be paid to the municipality. I don't think taxes should ever be paid other than to the municipality.

Mr Gilchrist: We don't have time to go down that road. But very quickly then, if in fact you get the assets for book value, are you prepared to put on the record that if you ever sell those assets again it will be at book value? And if not, why not? Why should the people in Moore township recover, in effect, a windfall instead of Ontario Hydro recovering their investment, not Moore township's investment — the aggregate of all the debt that has to be divided over all the province? If you are, then that's great. Are you prepared to put on the record today —

Ms Marsh: We've already told them that.

Mr Gilchrist: — that West Lambton as a utility will never sell to Consumers' Gas, will never sell to any of the other interested bidders out there at anything other than book value?

Ms Marsh: I'm here representing Moore township and we did make clear to Ontario Hydro representatives that we would buy it at book value and that if it ever got sold for anything other than book value — the market value — they would get their share in the difference. We were prepared to agree to that.

Mr Gilchrist: That's an important concession that we haven't heard from other MEUs. That's kind of you.

The Chair: On behalf of all of the members of the resources development committee, we thank you for coming before us today. We appreciate your telling us your story in person. We will give careful consideration to your request.

1000

GUELPH HYDRO

The Chair: Now calling representatives of Guelph Hydro, please. Good morning. Thank you very much for coming to the committee this morning; nice to see you. Before you begin, please introduce yourselves so my colleagues know who is making the presentation.

Mr Dan Mozziar: My name is Dan Mozziar and I'm here in my capacity as the chair of Guelph Hydro. With

me is Jim MacKenzie, the general manager of the utility. In the back of the room we have our director of operations, Rene Gation, and our director of engineering, Arthur Stokman. Each member of the committee should have a copy of our detailed written submission. This submission contains a number of recommendations on amendments to the proposed legislation and some examples of the potential impacts on electricity prices to consumers that could occur should this bill pass in its present form. In my remarks there's not time to address all the issues raised in our formal presentation. We would be pleased to respond to any questions on this material at a later time, at your request.

Guelph Hydro has served the citizens of our city since 1903. Guelph was one of the 13 municipalities that created the Hydro-Electric Power Commission in 1906. We have fulfilled our mandate to provide a safe, reliable supply of low-cost energy throughout our long history. We have done so in the spirit of a committed public service. So we say with confidence that we understand the business and we know our customers. We have some very positive views on how this industry should be restructured and how the interests of all our customers can best be served.

We have been involved in the debate about electricity restructuring since 1992 when the Municipal Electric Association started to examine options to restructure the industry. Back then we knew the industry had to change. A couple of years of dramatic increases to our wholesale rates in the early 1990s were evidence of that. In 1998, power purchases represented 88.4% of our costs; that is, 88.4 cents of every dollar goes to Ontario Hydro. Over the past nine years our gross margin has declined from 14.7% in 1990 to 11.6% in 1998. Local improvements can result in rates being stabilized or reduced; however, reductions at wholesale level are necessary to achieve meaningful reductions. I draw your attention to chart 1 and chart 2 in appendix 3, which will give you a cut on that. Efficiency gains at the wholesale level have a much greater impact. Clearly improvements in the area of greatest cost will provide the greatest benefit for all customers. One of the prime motivations for change is the goal of maximizing benefits to all customers. It is important that all customers share the gains resulting from these changes equitably and these changes should lead to real benefits in terms of lower prices.

We congratulate the minister for taking on the challenge of restructuring the industry. The task is complex and difficult, some might even say daunting, but one that must be done. We believe the legislation proposed does not go far enough to accomplish the restructuring that is required to deliver real change for Ontario's electricity consumers. I would like to provide you with an overall sense of our areas of concern as they relate to low-cost energy, market power, taxation, level playing field, local control, Ontario Hydro Service and retail access.

Low-cost energy: The legislation was introduced with the preamble that it is "An Act to create jobs and protect consumers by promoting low-cost energy through competition." However, the purpose section of the act

does not explicitly address low-cost energy and it's not specifically defined in the Electricity Act or the Ontario Energy Board Act. To ensure that future decision-makers understand the purpose of the legislation, there should be specific reference in both acts to the commitment to low-cost energy.

Market power: The issue of market power has been the subject of much attention. There's no doubt that Genco will be the dominant player in the Ontario market. It is difficult for us to believe that we will have meaningful competition in the electricity supply business as long as one player has 93% of the production capacity. The concern is that this situation will discourage new entrants to the market and prevent real competition where it is so critically needed. If left unrestrained, any dominant player in a market — and there's no doubt Genco will be a dominant player — will have a real opportunity to use its position to abuse the market and effectively block competition. This would be contrary to the government's stated objectives of lower energy prices and job creation.

The government must provide for regulatory intervention. The Market Design Committee has made several recommendations as to measures that should be introduced at the outset and the interventions in the market should there be signs of abuse of market power. The legislation should include the goal of enabling further unbundling of Genco assets as a means of making this sector more competitive in the future; I believe you people prefer the word "disaggregation." There should be a process for the review of market power issues within two years of the legislation being enacted.

Taxation: Bill 35 provides for the successors to municipal electric utilities to be established under the Ontario Business Corporations Act. The bill provides for those successor companies to be subject to the same tax calculation as any other OBCA participant in the market. If a tax exemption exists under the federal Income Tax Act, then the successor company pays the equivalent of tax to the Financial Corp to retire the residual stranded debt. The bill proposes that for local distributors the tax-equivalent payment is to be based on adjusted gross revenue. No other market participant will be subject to tax based on gross revenue. Other participants' tax obligations will be a function of business net income as determined under generally accepted accounting principles. Local distributors should not be treated differently.

Our utility and our customers must pay their fair share of the stranded debt; we all have that responsibility as electricity customers. We support payments in lieu of taxes towards this obligation. However, it is inappropriate to continue these payments after the obligation has been paid. The payments should cease once the stranded debt has been retired. No other market participant has this obligation. To continue with this in the bill can be construed as a tax grab. These continuing payments surely are at odds with the government's tax cuts in other areas and the goals for restructuring.

Level playing field: I wish to comment on the idea of a level playing field for market participants. The bill

expressly provides that municipally owned electricity distributors and affiliates be created as Ontario business corporations to compete in the industry. The proposed legislation then places limitations on the affiliates' business activities. It would be more appropriate to allow those municipally owned distributors and affiliates to engage in business on the same basis as others in the market. This bill should not restrict local utilities from pursuing the same activities as other competitors. By limiting the business activities of only local utilities, this bill unfairly impacts the potential benefits we could deliver.

Local control: We also wish to bring to the committee's attention our concerns that the bill does not pursue the Macdonald advisory committee recommendations on the creation of shoulder-to-shoulder local utilities. There is little incentive for the mergers and amalgamations as suggested in the white paper.

1010

The proposed Electricity Act appears to deny the rights of municipalities to set up their own local electrical distributor. Where a utility commission does not currently exist, the bill predetermines that the supplier, at least of the wires service and the default supply, will continue to be Ontario Hydro Servco. We understand that ministry officials have advised the MEA that the intent of the bill is not to deny municipalities the opportunity to create local utilities where one currently does not exist. If that is the intent, then the legislation should be amended to clearly reflect and encourage that intent.

Prior to and immediately following the release of the Macdonald report, some 230 municipal utilities were involved in conducting about 60 studies on the creation of shoulder-to-shoulder local distributing utilities. Guelph Hydro is involved in one such study in Wellington county. Our study, like others, was developed on the basis of the assets of all participants, including the Ontario Hydro rural system, being transferred to a new county distributing utility at book value.

With the emphasis in this legislation on mergers being voluntary and on a commercial basis, the prospects of achieving the Macdonald recommendations are less likely. Two issues stand in the way. Ontario Hydro, or its successor, Servco, may not agree to relinquish the assets. Second, the commercial market price may be significantly greater than the current book value. As the declared shareholder of Servco, the government may see this as an opportunity to benefit from the sale.

A transfer at book value would be consistent with the current Power Corporation Act and the Bill 185 amendment. Disposal at above book value would result in the new owner defining its rate of return on a higher equity value, and as a result customers would pay more. This does not appear consistent with the objective of the legislation.

We also note that the legislation would eliminate the municipality deciding who is to serve the municipal area. It appears that a municipality will not have the right to decide which entity serves the local residents. The Ontario

Energy Board Act refers to licences as not being exclusive in an area. While this is expected in a competitive business, in the area of the monopoly wires business it is reasonable to expect that the local single electric distributor would provide the service. Otherwise, we could have several monopoly businesses competing for space on municipal rights of way to build redundant monopoly infrastructures.

In the case of municipal annexation, the local council has always expected the local utility to serve the newly annexed area. However, the proposed legislation would suggest that residents could possibly have wires service, and as a result default supply obligations, from more than one local provider. We do not view this as a positive outcome.

The Ontario Electric Services Corp: Servco is created as an Ontario Hydro successor corporation. Bill 35 provides that the transmission and distribution functions operate the wires business in a single entity. In this single corporate structure there is the potential for conflicts and cross-subsidization which could negatively impact the competitors and their customers. One of the primary principles of restructuring is to separate transmission from distribution, such that costs of distribution cannot be artificially lowered by allocating costs to transmission through creative accounting.

We note that the transmission entity serves both the municipal distributors and the Ontario Hydro retail system. Given that, it is in our view inappropriate that the successor to the Ontario Hydro retail wires business be part of the same corporation. There is the obvious potential for conflict. Separation into two distinct corporations is the appropriate step in restructuring at this time.

Finally, retail access: The restructuring legislation is formulated around the idea that creating competition, moving away from the monopoly structures of the past, will provide benefits to all customers. However, we're not starting from scratch. There is a system in place that has generally served people well for over 90 years. The legislation must ensure that there is the appropriate level of protection for customers during the transition period.

During this period customers are vulnerable to those who seek advantage from uncertainty. The legislation should ensure that contracts for the supply of electricity before a retail business is licensed by the OEB will be deemed invalid unless reconfirmed by both parties to the contract. The legislation should also contain provisions for a one-year transition period. This period would allow consumers to be educated and informed about the new market.

The transition to a competitive market in the natural gas industry has taken over 12 years and there are still market issues being debated. With the greatest respect to the gas industry, we believe that the electricity industry is a bit more complex and to complete the transition in two years will be very difficult for all parties.

Other jurisdictions have moved cautiously and slowly on retail access. It is unrealistic to expect that Ontario will achieve in less than two years what has taken eight years

in the United Kingdom and almost four years in California.

So as we move down this path we would caution the committee and the government that the end-use consumer must be well-informed and a public education program put in place as part of the restructuring activities.

In closing, Guelph Hydro applauds the Ontario government for taking on this complex task. Our staff have been involved in much of the work of our association in developing a local utility perspective on industry reform. Our staff are still involved and are assisting in the Market Design Committee technical panel activities. So we are familiar with the issues and the complexities of introducing change.

We support the broad objectives of the government to make the electricity industry more competitive. Today, we have outlined some of our concerns about Bill 35 and the restructuring process. We ask that you consider our comments and the best interests of the customers we serve when you deliberate on Bill 35.

Thank you for the opportunity to address the committee. We would be pleased to respond to your questions.

The Chair: Thank you very much. We have four minutes for questions from each caucus. We'll begin with Mr Lessard from the NDP.

Mr Lessard: Thank you very much. It's a very detailed and well-presented presentation that you've given to us this morning. You've certainly put a lot of work and thought into it.

I share your advice and concern with respect to exercising caution as we go down this road moving towards competition. You mentioned a couple of other examples, in the United Kingdom and California, and the length of time that it took them to finally bring into place the restructuring there.

I wonder if you could comment about what you see as the downside, some of the problems we may encounter, if we do move ahead too quickly, based on your experience in those other jurisdictions.

Mr Moziar: One of the first things obviously is, what is this market going to look like? The first question I asked — Jim is on one of the Market Design Committee technical panels — was, "Can you tell me how the money flows?" And they said, "No." So the first issue we get into is the whole process of settlement and paying, who pays what and who collects and who meters. Just to put that in place in two years I find will be extremely challenging. Jim, do you want to add?

Mr Jim MacKenzie: One of the issues as we move into a competitive market — and we've already indicated that we support that objective — is that consumers in this province have been used to a particular system for many years. Although there are problems with the monopoly structure, they are at least used to that. When we move to a different form of market, then it's very important that consumers be well-educated. I think the large consumers are generally pretty sophisticated. Large consumers can look after themselves generally pretty well. It's the smaller consumer, both residential and small business —

the chap who runs a small tool and die company, generally a smaller industrial concern — who doesn't have the time or the background to delve into the intricacies of a competitive market. Those are the folks we really have to spend some time educating.

That's something that we've obviously outlined in our presentation and in our submission. Consumer education is very important, and the protection of those consumers, because there are folks out there who will take advantage of people during a time of uncertainty. That was evidenced in the gas business as well.

1020

Mr Lessard: There seems to be broad agreement with respect to competition, based on the government's assurances, that prices are going to decrease as a result. Whatever benefits may be available, we want to ensure that all consumers are going to benefit, including small businesses and residential consumers.

You said in your opening remarks that you thought there may be some impacts on price. I'm wondering if you believe the government's assurance that prices will go down, either in the short term or in the long term, or do you think this is what has been referred to as a leap of faith?

Mr MacKenzie: I would say initially it certainly is a leap of faith. There is no guarantee that prices will go down in the short term, at least for the average or smaller consumer. If you turn to appendix 3 in our submission and if you look at chart 2, which reflects the total cost of electricity in terms of the purchase of electricity over 1,000 kilowatt hours, I think one of the reasons we're here today and one of the reasons we have Bill 35 is that the blue portion, which is the cost-of-power portion that we pay to Ontario Hydro, has increased dramatically. That's the reason we're doing this. It's because prices have escalated at a fairly significant pace during the 1980s and the 1990s. We have to focus on that.

I think some of our submission speaks to really addressing the cost at the wholesale level. If we don't address cost at the wholesale level, we won't lower prices. I think that chart speaks to that, as do the other two charts that are behind it.

Mr Moziar: Two things on that: One, Hydro is the dominant player in the marketplace. Second, even if it weren't, there is no way of getting the traffic in. The tie lines only give you 15% inflow of new market participants from other jurisdictions, so I don't view that as meaningful competition. Again, disaggregation might help or should help get that competitive thing going.

Mr Gilchrist: Thank you, gentlemen. I appreciate your presentation. I particularly appreciate the detail you've gone into in your appendices. Particularly in appendix 1, you make a number of specific, somewhat technical in some cases, recommendations, and we'll certainly take those back as well as your general comments.

You say in clause 106(1)(k), part IX, "the section may be in conflict with existing federal standards and requirements on the use of meters." Perhaps you could flesh that

out and send us your written thoughts on why you think that conflict exists.

In the limited time we have here today, I would like to explore a couple of points with you; first off, low-cost energy. I guess you're right, you could put any comments reflecting wishful thinking in the preamble of a bill. I don't know the relevance. I would invite you to offer your observations on any jurisdiction that went through what we're going through that didn't see a reduction in price. With all the empirical data that's out there around the world, why would we need to do something that is a given? Any number we pick, any arbitrariness that we put in, clearly would wind up being something that limits the market. Are you aware of any jurisdiction that hasn't seen a price decrease?

Mr MacKenzie: I think you've got to be very careful when you draw some very broad conclusions and say that what happened in Argentina, for example, where they've experienced a 40% decrease, is going to be something that happens here in Ontario. They may have a completely different system. They may have completely different debt-equity ratios. Their whole system could be so different from Ontario that to draw an exact parallel will be very difficult.

If you take a look at the UK, there was very little debt involved in the UK when they restructured and privatized. It's very difficult to draw exact parallels.

I would say that in the short term, for the average consumer, prices likely will not go down; in the long term, likely they will but it will take a number of years. I wouldn't want to jump to a conclusion that says in five years we'll have a certain percentage in terms of price reduction. I don't think I would be bold enough to commit to that.

Mr Gilchrist: That's why we don't think it's appropriate in the preamble of a bill.

Mr MacKenzie: If I can get back to the point about the preamble, I think it should be very clear to this government and any future governments that the objective of the legislation and the objective of the Energy Competition Act should be to lower prices to consumers. That should be the objective. If future governments are looking at this bill and, for example, the Ontario Energy Board is looking at aspects of the industry, they should have that as a touchstone, that the objective is lower prices. If you don't have that as a touchstone, then you're allowing yourself to see prices go all over.

Mr Gilchrist: I think we're on record in enough forums that that's our goal, so I guess I can state as a given that as long as we're around, you've got the guarantee that that will be the objective.

Mr MacKenzie: I don't think it would be appropriate for me to comment on that.

Mr Gilchrist: No, it wouldn't, I'm sure. Very quickly, because I know my time is running out here, another major part of your presentation, and we've heard it from other MEUs, is market power. It's intriguing to me, sitting here in Sarnia, and just last Thursday there was in the Financial Post an announcement of another cogeneration project

here in Sarnia. I'm sure that's something very exciting to the locals here, another great investment. They mention TransAlta, a presentation we're going to get this afternoon and I'm sure we'll touch on their cogen. Those two projects alone could supply 25% of the power of Sarnia tomorrow, if they were up and running. That's one town.

Why would anybody have this belief that you have to break up Genco in order to get competition? We've got the prima facie evidence that by simply allowing for a competitive marketplace, people are going to come and reduce Genco's percentage the other way, by creating new supplies.

Mr Moziar: How are you going to handle three issues? One, that new capacity causes a greater problem with your stranded debt. That's the first you deal with; you look at those sources of supply. The next thing is, if you're going to allow those people to go in and put in NUGs, cogeneration plants, why won't you allow us to put them in? We could do the same thing as well and we have sites that are economic, and we agree, so hopefully under the new regime, under the new rules of the OEB we will be allowed to participate in that market on a competitive basis. As Bill 35 is written right now, we are restricted and we don't appreciate that. We don't agree with it.

Mr Gilchrist: There's a bit of a contradiction there, I'm sure you would agree. On the one hand the MEA has taken a position that we should be busting up the suppliers, and yet your suggestion is perhaps we should allow even greater consolidation for the MEUs.

Mr Moziar: The argument is you've got to get competition from 15% up to at least 50%, so how you do that is an interesting problem. You're saying, "We'll build more NUGs." We have no difficulty with that except that as you build more NUGs, you have this problem with the stranded debt and the assets keep adding on to it. So that becomes a difficulty.

Mr Gilchrist: Hopefully in all of that we'll see greater efficiencies and the taxpayers will win and the ratepayers will win, by simply seeing Genco and Servco —

Mr Moziar: Not if the price is increasing. You're squeezing a balloon as far as I'm concerned and it's popping out in another area.

Mr Gilchrist: We have great faith that the new jobs and the new investment will also be giving us revenues that go towards that.

Mr Conway: Thank you very much, gentlemen, an excellent brief. I want to say again in the presence of my colleague the Chair that my experience in this debate is that the people at Guelph Hydro are among the most knowledgeable people I've met in my time as the critic.

Mr Gilchrist: You say that in every town.

Mr Conway: No, I don't. I want to be very blunt. I'll tell you, the two people before us are as good as I've found it gets in this business. I just say that quite unashamedly.

Mr Gilchrist makes a very good point. There is no doubt there is new technology that's out there that will, under current assumptions, drive rates down. I'm

absolutely convinced of that. The problem surely is, in the short term, how we manage, particularly the great nuclear experiment that did not work as advertised. Twenty-five years ago the religion of the time was, "Just build these big nuclear power plants and they will give you the most efficient, cost-effective, smooth-running power plants imaginable," and it didn't work out. That's our problem in the short term. One of the big parts of the problem is how we manage that.

I would expect that in a normal market people will run as fast as they can and as far away from things like stranded debt and the troubled nuclear power division. That will be somebody else's responsibility. That's what I expect. In the public interest, we're going to have to try to manage it in some fashion that's fair to everybody, including the broad base of residential and farm consumers.

1030

I want to focus on one particular point because it goes back to the conversation we had with Moore township. I am really concerned by what I have seen in the last few weeks, particularly by the testimony last week of Mr Osborne, who told the committee basically it is the stated ambition of his new mandate at Ontario Hydro to grow the retail company. The Macdonald commission made plain that it was their expectation that there should be a rationalization, and in southern Ontario it should be largely in the area of fewer but larger MEUs. Let me read from page 70 of the Macdonald commission report of May 1996:

"Ontario's municipal electric utilities have combined assets of about \$5 billion, little debt and a relatively large net income. Ontario Hydro retail, while it has assets of \$2.8 billion, also shares a portion of the debt load of Ontario Hydro," which at the time was estimated at \$33 billion.

One of the real fights we've got here on the retail distribution side is who gets at the assets and who gets the debt. In the reign of Pope Maurice I, three or four years ago, I remember Mr Strong saying he looked covetously at the multi-billion dollar asset base of the MEUs, and he was literally salivating trying to figure out how he could get the Ontario Hydro snout into that, and I don't blame him. If I were the chairman of Ontario Hydro, I'd be looking there too.

That's surely one of the real power plays that is going on here. If I'm running Servco, particularly a Servco that's going to be commercialized — when I say "commercialized," it's not going to have any Ontario government debt guarantees in the new order — I'm going to want to aggressively get into new business, and more than anything else, I'm going to want to feed to the greatest extent possible on the large assets base of the MEUs and the very limited debt obligations.

On the other hand we're told that what really will give us the efficiency that we want in southern Ontario is to reduce substantially the number of MEUs, to bring in private sector partners, but essentially to move Ontario Hydro retail out of a lot of the southern Ontario business.

My question is, how does this committee arbitrate the multi-billion dollar power play that is already at work in the retail side? Because I'll tell you one thing: The

residential customers I know are going to want reliability, good service — which many of them feel they haven't been getting in recent days, particularly from Ontario Hydro retail — and they are going to be mad as hell if they end up paying some kind of special charge between various elements of government.

Mr Moziar: The first point on that, Mr Conway, we indicated in our presentation that you've got to separate Servco's distribution retail from the transmission. If you don't do that, there are great difficulties. So that's the first thing. If you do that, then I'm not afraid that the MEUs or the local distributors will be able to take Hydro on and beat them, because I think we run better.

Mr Conway: Jim?

Mr MacKenzie: I want to get back to this issue of — you ask how you arbitrate. I think we have made recommendations in our submission with regard to sections 130 through 136 of the Electricity Act and some recommendations in terms of the OEB act that would deal with the transfer of assets from Ontario Hydro Servco to local utilities. We participated in a study with all other utilities in Wellington county to develop a county utility, and that was based on the transfer of assets at book value.

To the point that now Ontario Hydro is looking at market value as a result of Bill 35, I would suggest that you end up having those customers paying twice for the equity they have already put in the system. I think someone has made the point that if they pay market value, the excess will go towards paying the stranded debt. That would seem appropriate, but I think it's inappropriate in that those customers will already be contributing to the stranded debt through the competition transition charge, they will already be contributing to the stranded debt through the payment of taxes in lieu through their local utility. To then have those customers pay an additional sum because their utility has amalgamated with some others, including Ontario Hydro retail, is to my mind inappropriate. I think Moore township made the point very well this morning. You've got to be very careful that in those places where amalgamations and mergers make sense you don't penalize those customers who are involved.

We annexed an area of Puslinch township several years ago and the residents of that area saw an immediate 12.9% reduction in their rates. That should say something.

The Chair: I hate to interrupt. I know this is an interesting topic, but we do have to move on to be fair.

Mr Conway: And interesting people.

The Chair: And interesting people. Gentlemen, thank you for coming before the committee. You do have a very detailed brief, and I know all my colleagues will be anxious to read this through and look at your advice.

Mr Moziar: Please contact us if you want to discuss any of the items. Thank you very much.

TRIGEN ENERGY CANADA

The Chair: Now calling representatives from Trigen, please. Good morning and welcome to the committee.

Mr Derek Macartney: I'm Derek Macartney, vice-president of Trigen Energy Canada.

Ms Susan Shaw: I'm Susan Shaw, president of Trigen Energy Canada.

Mr Mark Hall: I'm Mark Hall, director of government affairs for Trigen Energy Corp.

Mr Macartney: That blew my introductions.

Good morning. I welcome the opportunity to address this committee on the very important subject of Bill 35. We are here representing Trigen. Trigen Energy Canada is a wholly owned subsidiary of Trigen Energy Corp, which is based in White Plains, New York.

Trigen is the leading thermal science company in North America, serving governments, industry, commercial, residential and institutional customers with thermal products such as steam, hot water, chilled water and electricity from 31 plants in 23 locations. We currently have operations in two provinces and 14 states in the US.

Trigen Canada's present operations are comprised of two district energy systems with combined heat and power plants, in London, Ontario, and Charlottetown, Prince Edward Island.

Trigen London is the oldest district heating system in Canada, and in 1996 we installed a 3.5-megawatt combined cycle plant. In 1997 it received the prestigious award from the Institute of Power Engineers for the best cogeneration facility under five megawatts in North America.

Trigen Canada became involved in PEI when the provincial government recognized it needed additional investment and expertise to fully gain the benefits of district energy. In a very short time frame, Trigen and the Prince Edward Island government had achieved their goal of a state-of-the-art district energy system. The new facility in Charlottetown combines three independent heating and cooling loads. A 1.5-megawatt steam turbine was added to the plant, with excess electricity sold to the grid.

Before we discuss our comments on Bill 35, which Mark Hall will address, it may be helpful to review the events that led to the current status of the electrical industry. The initiative underway in Ontario is reflective of governments addressing the same issues around the world. Our current model is not unique.

Electricity was not developed for commercial use until the 1880s. The electric industry developed for the next 30 to 40 years, with many entrants entering into the marketplace. Beginning in 1920, electric generation and distribution was made a protected monopoly by governments all over the world and was not subjected to market forces anywhere until 1989, when Great Britain began to deregulate electricity generation and supply.

The good news is that technology has changed, that inventors and developers are constantly seeking new ways to provide desired services. The bad news is that laws do not change automatically, and that is why your task is so important. If history is any guide to the future, this process of fully opening the Ontario electric markets to true competition could be delayed for years beyond the actual end of the natural monopoly.

1040

There are no longer any natural monopoly characteristics associated with electric generation. As our plant in London demonstrates, the technology of small-scale generation exists and is quite mature. Technically, all of the generating plants can connect directly to an end user or to the grid, and sell electricity in a competitive market. What is more important, and often overlooked, is that there is always heat left over when electricity is traditionally generated with fuel. This wasted heat should be captured and sold, reducing the cost of the electric generation and reducing the impact on the environment. It is not difficult to accomplish this, provided that the electric generation plant is close to the heat user.

Sadly, for the past 70 years consumers have been denied the competitive possibilities of dispersed power generation that combined heat and power plants can provide. Those early years of the developing electrical industry were exciting times. Government leaders dreamed about the significant increase in the standard of living for their citizens if they could electrify their community, and it became important to government leaders to provide this service for as many citizens as possible. While this was made possible by establishing monopolies, the same monopoly of service now prevents government leaders from reaching the same objectives today.

I'd like to ask Mark to address the points on Bill 35.

Mr Hall: Good morning. We believe that Trigen is in a good position, through our historic actions, to demonstrate to the committee how competition will affect generation in Ontario. We believe that if a truly competitive marketplace is created, then electric rates will be lower than they are today for consumers. There will be less reliance on our extensive electric distribution network and the province will, among other things, move towards small, distributed energy facilities like combined heat and power plants that use the same fuel twice, once to make electricity and once to make heat. We will simultaneously reduce air pollution from the energy sector. As competition is unleashed, distributed combined heat and power plants, renewable energy projects, fuel cells and other technologies will become the new paradigm and will ultimately render most central plants obsolete.

The government has recognized that monopoly regulation of the electric utility industry is a poor substitute for the competitive marketplace when it comes to creating an efficient, low-cost electricity market. Importantly, we all recognize that the guiding hand of government is needed to ensure that the health and welfare of our people and the environment are protected. However, we must be ever diligent to avoid the replacement of a monopoly regulatory system, rife with arcane and outdated rules and regulations, with a new system of burdensome regulations which will stifle competition. We recognize that this is really a process of re-regulation instead of deregulation. However, the benefits sought by this process will only be achieved if we strive for equity and balance. We consider this to be an important first step.

Let me turn now to discussing some of our thoughts specifically on Bill 35. All in all, we commend the efforts

of this committee and the government at large to open Ontario's electricity market to competition. The bill before us is a testament to the hard work of many people.

I'm going to focus my comments on four points today: market power, generator and consumer charges, licensing; and contract sanctity. The written comments that we've submitted also address other topics, including the Electrical Safety Authority, special payments, default supply provisions and regulations of the Minister of the Environment.

As a company which has direct experience with the extent of market power that monopoly electric utilities can bring to bear to eliminate unwanted competition, we are very concerned about the market power that the Financial Corp and the Generation Corp will have, and will inevitably use, to reduce competition. We agree with the Market Design Committee that the decision to rule out divestiture of Ontario Hydro's assets places a severe limitation on the ability of the IMO and OEB to minimize the exercise of market power. In our own experience, laws, regulations, oversight boards and even courts have not been able to effectively imitate what plant-by-plant divestiture of assets accomplishes.

Plant-by-plant divestiture spreads out the ownership of what currently amounts to almost 90% of the generation capacity of Ontario to multiple owners who will be forced to compete head to head to win customers' business. This will ensure that technological innovation will come quickly to the marketplace instead of slowly over a period of many years. While it may be possible that the oversight bodies established by this legislation will be able to curb market power to some degree, we believe that without divestiture, competition will be hampered by the market power of Genco. It may be possible that some of the mitigation techniques offered by the Market Design Committee could alleviate some but not all of our concern.

As an additional point, divestiture provides the only real opportunity to dramatically reduce and possibly eliminate stranded debt. This legislation would allow Ontario Hydro to take all of their historic debt and perhaps all the additional new debt from the refurbishment of their many nuclear plants and coal-fired operations and move that into the Financial Corp. Then they will get to transfer unencumbered generation assets into Genco. The revenue from divestiture of the generating assets that would be transferred to the Generation Corp could be used to substantially reduce, if not eliminate, the stranded debt. This would accelerate the transition period, allowing additional savings to be delivered to consumers more quickly.

A related issue involves the requirements under section 79, subparts 4 and 5, which require every generator in Ontario to pay a charge to the Financial Corp and every consumer to pay a similar charge to the Financial Corp for electricity used in Ontario. This is problematic as it creates numerous opportunities for inequity. Electricity imported into the province would avoid the generation charge and electricity exported from Ontario would avoid the consumer charge.

Ontario consumers are the ones who will ultimately pay for stranded debt. There is no reason for generators to pay a charge that will just get passed on to the consumer, when the consumer is already paying a charge. Generators in Ontario which serve Ontario consumers should not be required to pay an additional charge. For existing Ontario Hydro assets that are transferred to Genco or maintained by the Financial Corp, these facilities could pay a charge for electricity exported and the charge should be used to pay down stranded debt. Ontario consumers should not have to pay a charge to pay down debt if Genco will generate more profit by exporting the power. Certainly there appears to be nothing in the stranded debt formulas that account for revenue from exports of power, although it's clearly contemplated. The elimination of a generation charge puts importers and generators in the province on equal competitive footing.

Furthermore, the definitions of "generating facility" and "generator" are overly broad and could be interpreted to include self-generation facilities which were already built and paid for prior to the enactment of this legislation. These facilities did not contribute to Ontario Hydro's stranded debt and should be exempt from any charges, licensing requirements or other new requirements. We feel strongly that no generation facility should have to pay a charge to the Financial Corp. However, we feel even more strongly that should generators be forced to pay a charge, self-generation facilities, whether self-owned or third-party-owned, should not be defined as generators subject to charges or licensing requirements.

One of the purposes of this act is "to facilitate energy efficiency and the use of cleaner, more environmentally benign energy sources." Several organizations, including the Market Design Committee, have suggested ways to achieve this purpose, and I will specifically address the concept of a renewable portfolio standard later in my comments. However, in the context of assessing competitive transition charges, it seems to us that one sure way to encourage the construction and use of highly efficient fossil-fuel-fired generation assets and renewable energy technologies is to exempt or partially exempt these facilities from competitive transition charges.

Consumers who agree to purchase electricity generated from highly efficient combined heat and power facilities, fuel cells, biomass, hydro or solar panels could be excused from paying the charges. This would have the effect of lowering the cost of using these innovative and environmentally sustainable technologies which have important air quality benefits, combat against climate change through the reduction of carbon dioxide emissions and help to bring along these fledgling industries.

In a related vein, the Ontario Energy Board Act establishes numerous licensing requirements. It is unclear whether individual facilities may require multiple licences for their basic operations. In general, we agree that licensing of market participants is reasonable and desirable to limit fraud and abuse. However, we would again offer caution against creating a process which overly burdens new market entrants.

As stated before, legislative language should be added to ensure that regulatory agencies strive to balance the interests of all parties and strive to minimize any new barriers to new market participants. A consolidated licence might be one solution to avoid the need for multiple licences to generate electricity, retail electricity and purchase electricity.

1050

Trigen Energy Canada, through Trigen London, generates electricity that is provided to London Hydro and is sold by them. We are taking advantage of combined heat and power in an urban setting where both electricity and thermal energy are required and can be cogenerated together cleanly and efficiently. Currently there is a provision in the bill that appears to cause all contracts entered into between a municipal corporation and any other person to cease to have effect once the standards of non-discriminatory access come into effect. Should this become law, we could be significantly harmed.

While no one can predict the future with certainty, the sanctity of a contract should be respected. Like Ontario Hydro, we built a plant to meet the needs of the city of London based on an expectation and a contract that we would be fairly compensated. Unlike Ontario Hydro, our facility cannot recover any stranded investment or debt and is in fact likely to be burdened with further penalties through generator charges. At the same time, the contract for the facility could be nullified without providing the opportunity for access to another equivalent market. The only one that would be available would be subject to transmission fees, generator charges and wholesale auction rates.

This result may not have been foreseen when the applicable section of Bill 35 was drafted, but its unintentional consequences are indeed severe for us.

I would like to make one brief comment on a topic not specifically addressed in Bill 35 but which has been discussed at length in documents prepared by the Market Design Committee and others.

The technology for using renewable sources of fuel to create electricity is expanding at a rapid pace. Biomass, solar, wind and hydro projects still all have high capital costs, but they are increasingly important for their minimal impact on the environment and their lack of reliance on limited fossil fuel resources. The energy sector of the future must be dominated by these technologies to ensure the environmental sustainability of our province, our country and the world. However, a mandate to force suppliers to adopt these technologies on a widespread basis too quickly could dramatically increase the price of electricity for consumers. In addition, of the renewable energy choices, only biomass provides necessary steam at various pressures for industrial processes, and this may severely limit the technical options for many new competitors.

Trigen believes that the objective of the renewable portfolio standard is to reduce fossil fuel dependence and reduce air pollution. Several fossil-fuel-based technologies dramatically reduce fossil fuel dependence and have

limited impacts on the environment, at substantially less cost than traditional renewable technologies. While we support the development of renewable energy wherever feasible, we believe a broader standard will allow the market to decide how best to save fuel at least cost.

Trigen suggests that the committee add high efficiency generation to the power that qualifies for the renewable portfolio standard and change the term to "fossil fuel reduction portfolio standard." In order for plants to qualify, establish a starting point and allow for that to stay the same over time, or possibly increase. Parties subject to the law would then have a choice between investment in renewable energy or energy efficiency. This is certainly consistent with the purposes of the act and should help to spur additional technological innovation. We would be happy to supply additional detailed information about this concept, if appropriate, to the committee.

Thank you for your time. We'd be happy to answer any questions.

The Chair: Thank you. We have three minutes for questions from each caucus.

Mrs Johns: Thank you very much for your presentation. I appreciate it. You certainly raised a lot of issues and we may have to explore some of those after.

I just want to talk about a couple of things. You have done some work in green power issues, I think. You're one of the forerunners in the province who has done some things on this issue. I'm wondering if you can tell me, if we put a cap on the rates in the purpose clause or somewhere throughout the act, would that limit the amount of choice that a consumer would have to be able to choose green power? Do you think that people may choose green power at no matter what price, that some people might be into that? Could you comment on that?

Mr Hall: Yes, I think a cap on price would limit the ability of a number of green power options to come to market. Clearly, what we have seen in deregulated markets elsewhere is that people are willing to pay sometimes 10%, sometimes 20% more for green power and are interested in supporting that. The price cap could keep those projects from being built locally.

Ms Shaw: I'd also like to point out that there are green power projects which are not necessarily more expensive.

Mrs Johns: Exactly. I understand that too. As I heard from your presentation, some of your technologies are coming so far so quickly that it may be that they're in the price range that some people may well choose also.

One of the issues we've heard a lot about is that competition will enter the marketplace. One of the reasons we wanted to have you here was that you have provided meaningful competition in the city of London for some time, or would like to, depending on how you look at that. Can you just tell us if you believe that meaningful competition is going to come into the marketplace as a result of Bill 35?

Ms Shaw: Bill 35 is certainly a very important first step. I think it is only a first step, but the outcome is inevitable. Competition will occur. This is an important method to get that started. In places earlier the projects in

Sarnia were referenced. There is competition going on now. This will certainly enhance it, but I hope in the future it goes farther than Bill 35 allows.

Mrs Johns: Do you see the day when a company such as yours, competitive companies, can match or lessen the price that Ontario Hydro will have to charge?

Ms Shaw: What I really have to answer that question is a basis of other industries which have deregulated. If you look at a lot of the monopolies in the US that have deregulated over the last 20 or 30 years, things like long-distance telephone service and railroad transportation, prices have dropped, as a result, an average of 20%, I believe, and I think that is inevitable in Ontario as well. I personally believe that is a fact of life, given true market competition, and that will occur when we get to true market competition.

Mr Hall: Our experience in other locations is that we can compete with the utilities —

Mrs Johns: That you can?

Mr Hall: That we can, absolutely. Just one quick case is in our operation in Philadelphia. The Grays Ferry project has a long-term power purchase agreement. It's a combined heat and power plant that serves a large district steam system as well as providing electricity. It is a contract for 90% of the wholesale price going out 20 years. So it can certainly compete very favourably with any utility into the future and will guarantee it.

Mrs Johns: And those savings would be passed on to the customer, then, of course.

Mr Hall: Of course.

The Chair: I'm going to move on, because we're into Mr Phillips's time at this point.

Mr Gerry Phillips (Scarborough-Agincourt): I have a three-part question, because sometimes you never get to the second question. I'd just ask you to comment on these three things. One is, the reason we've been told that Genco will retain the capacity is in order to compete in the northeast of North America. That's an essential mass that one needs to compete. Obviously you have some disagreement with that, but why would you disagree with that?

The second thing is I actually have the opposite concern that you do. My concern is that too high a share of the stranded debt will be assigned to Genco, making them uncompetitive over the haul, making it, frankly, tremendously to your benefit and to other cogenerating benefits, but leaving the taxpayer on the hook, because by retaining all of Genco in one pot, in my opinion, the value of those assets drops the day the bill is passed, or at least the day the debt is assigned to it, because it then becomes far more attractive for cogeneration. That's why many of the people are in this room. There are huge profits to be made.

My third question is, you must follow Ontario Hydro, and I'd like you to comment on — I see Ontario Hydro's profits jumped 58% today — the way they report their finances. Their 1997 annual report was done in a way that no private company could ever do. They used what's called the rate-setting authority of the board of directors to essentially, in my opinion, report the finances in a way that's very different than any private sector company —

I'm choosing my words carefully here — by writing off against previous years things like future tree trimming, future interest costs, \$2.3 billion worth of —

The Chair: We'll need time for an answer.

Mr Phillips: Those are my three parts. Your view on Ontario Hydro's financial reporting.

1100

Ms Shaw: I'll try to address your points in order, the first being Genco competition in the northeast of the US. I've read Mr Osborne's comments in front of this committee last week and I beg to differ. He's looking at a potential service area of which he is going to have perhaps 15% of the generation capacity. I think, though, that if I look at the prices of electricity in the northeast, yes, they are indeed very high. Every utility from Mexico on up believes it can sell into that market successfully. I don't know that any of them really have a guarantee on that. I am aware that the FERC recently, I believe in June, denied Ontario Hydro's appeal for FERC licensing, so at present that is speculation at best. No one knows what's going to happen.

Your next point, about worrying about too much stranded debt ending up in Genco, very much leads me to the same result as not having enough, which is, the only way to effectively do that is to do some divestiture and find out what the assets are indeed worth and apply that against the existing debt.

Mr Macartney: The only thing I would like to add to that is we don't want to see an uncompetitive marketplace in any direction. Good competitors make for good marketplaces, so it's not to our advantage in the long run to see Ontario Hydro weak or strong. What we want to see is a good economic balance and a balanced marketplace. That is our objective.

The Chair: We move now to the NDP.

Mr Lessard: I appreciate your comments with respect to renewable energy portfolio standards, because if there are a couple of areas where I have the greatest concern, they are (a) with respect to ensuring that environmental quality is improved as a result of Bill 35, and (b) if there are any price benefits consumers can get, if and when they happen, that everybody shares equally.

I take it that what you're suggesting is that renewable energy or green energy, or however you want to define it, should be subject to some sort of a rating, because that's the only way you're going to be able to get natural-gas-generated electricity included in the renewable energy portfolio. Just to follow from that, I wonder whether you think there's some sort of rating or whether it's possible that nuclear power might be considered renewable energy as well, based on that sort of standard that you want to apply.

Ms Shaw: I think, first of all, there is a basis that already exists for looking at natural-gas-fired electric generation as a type of generation to be promoted. I think the federal rules on depreciation which allow accelerated depreciation for highly efficient assets like this are the sort of thing that the province should also promote.

Candidly, I'm sorry, but unfortunately part of my background is in the nuclear power industry, and I do believe that while there are safety aspects that need to be taken care of and that while a nuclear power plant must be very carefully looked after, indeed nuclear power is one of the options that needs to be considered. Certainly from a greenhouse-gas perspective it's undeniable that there are no greenhouse gases.

Mr Lessard: I was afraid of that.

The Chair: That's all the time we have for this presentation, but on behalf of all the members of the committee, we thank you for coming forward with your advice. It's a detailed brief, and I know we will all read it carefully later.

SUNOCO INC

The Chair: I would call now representatives from Sunoco, please.

While these people are getting settled, I'd like to extend a special welcome to David Boushy, who is our local MPP — David has joined us this morning; he's at the back of the room here — and of course a special thanks to our minister, who is making a presentation at lunch here in Sarnia and has taken the opportunity to join us. We're pleased to have you both.

Mrs Johns: On a point of clarification, Madam Chair: The group that was just here mentioned FERC. I just wanted to, for my colleagues, say that FERC was denied basically because of the market power that Ontario Hydro held. Both Ontario Hydro and the government believe that introducing competition into this marketplace may well mitigate the concern that FERC expressed earlier.

The Chair: Thank you.

Good morning and welcome to the committee.

Ms Gia DeJulio: Good morning, ladies and gentlemen. My name is Gia DeJulio, and I'm with Sunoco. I'm the director of energy supply and regulatory affairs. I'd like to say thank you very much for allowing Sunoco the opportunity to express its views here today.

Suncor Energy is an integrated energy company. It produces oil and natural gas and is also the parent of Sunoco. Sunoco is a large industrial user of natural gas at its refinery here in Sarnia. Sunoco is also a significant supplier of natural gas through its residential and commercial retail gas marketing business in Ontario. With the introduction of competition in electricity, Sunoco also intends to market electricity to residential and commercial customers in Ontario.

Since launching its natural gas retailing initiative in April 1997, Sunoco has participated extensively in many Ontario Energy Board proceedings and industry association activities with two clear objectives in mind: first, to assist in the transformation of the formerly separate monopoly markets of natural gas and electricity sales into one new competitive energy market. Sunoco's second objective was, and remains, to address and remedy the negative perception of gas marketers among natural gas consumers. These two objectives are related, because an

effective business environment requires customer confidence.

Sunoco has worked in support of consumer protection with the Ontario Energy Board, the Ministry of Consumer and Commercial Relations, the Ministry of Energy, Science and Technology, and with other market participants and consumer groups both informally and through the Ontario Energy Marketers Association, which we call OEMA.

I personally am a director of OEMA, where I participate in a number of committees, including those responsible for government relations and customer communications. I have devoted a significant amount of time to these responsibilities, and I would like to introduce you here to the person who has tolerated my time-consuming contribution to this industry: Mr Don Heath, vice-president of energy solutions at Sunoco.

Mr Don Heath: Good morning. Thank you for the opportunity to address the committee on a matter which is of interest to all consumers in Ontario.

The intent of Bill 35 is clearly evident in its title, Energy Competition Act. It recognizes that the competitive market which Bill 35 aims at creating and maintaining is one energy market, not two separate markets for gas and electricity. Sunoco strongly supports this approach. Customers, who should be the ultimate beneficiaries of this bill, need energy. Whether that energy originates from gas or electricity is irrelevant. Bill 35 should therefore recognize and develop one competitive energy market.

In Sunoco's view, the development of this competitive energy market should be driven by the following three principles: First, there should be consistency in the treatment of gas and electricity markets; second, monopoly ratepayers should be protected from cross-subsidizing competitive activities; and third, the timetable for competition should be aggressive and specific.

1110

Sunoco advocates convergence in the energy market so that consumers may seamlessly move from one energy form to the other. This provides customer choice and customer mobility, which are the hallmarks of a competitive market. Energy marketers such as Sunoco also need the ability to move seamlessly between these markets because harmonization provides economies of scale and operational efficiencies which allow us then to offer customers a wider range of energy products and services.

Bill 35 largely encourages convergence of energy supply, and we support it on that basis. However, there are some differences in Bill 35's treatment of gas and electricity which we believe should be addressed.

First, the energy board act empowers the Ontario Energy Board to consider a number of objectives for both gas and electricity. The inclusion of an objectives section in Bill 35 is valuable because it provides the board with guidance in its approach to the many issues it will have to address in the future. But convergence requires that the objectives of the board respecting electricity and gas should be consistent. In Sunoco's view, Bill 35 largely achieves the goals of establishing a single competitive

energy market. However, one area where we suggest improvement could be made is in providing greater harmonization between the objectives that the board should pursue in electricity and in gas.

In general, the objectives respecting electricity are preferable to the purposes respecting gas. In particular, the following objectives respecting electricity should also apply to gas, with the appropriate modifications:

Section 1, paragraph 2, which reads, "To provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario."

Section 1, paragraph 4, "To promote economic efficiency in the generation, transmission and distribution of electricity."

Second, market participants in either energy form should be subject to the same regulatory rules and conditions. In effect, there should be one-stop shopping for gas and electricity retailers. Unfortunately, Bill 35 sets up two licensing systems, one for gas and one for electricity. These systems should be merged.

For example, gas marketers can have their license application refused if they have not carried on business with integrity and honesty. However, the requirement for honesty and integrity is not explicitly stated for electricity brokers. The reality is that gas brokers and electricity brokers will often be the same people. In other words, the situation could arise where a marketer is found to have inappropriately conducted themselves as a gas broker and not be entitled to a licence, but could qualify as an electricity broker. In our view, requiring honesty and integrity just makes good business sense, and it should apply to both gas and electricity brokers. They are both serving one market, the energy market, and they should be held to the same standard.

I would like to digress here for a moment and address past consumer protection issues and concerns in the natural gas market.

The major impediment to the development of an effective natural gas market was the prohibition under the old Ontario Energy Board Act against the sale of natural gas in Ontario by anyone other than local distribution utilities. This prohibition prevented customers from making simple and direct purchases of natural gas from competitive suppliers. The result was a series of buying arrangements that were aimed at ensuring that the actual sale of gas, ie, the title transfer, occurred outside the province. The result was complicated, cumbersome and, most important, confusing transactions which left many residential consumers unsure of who was actually supplying their gas. This led to many complaints from customers who said they were being taken advantage of.

Bill 35 removes the prohibition against title transfers. Sales therefore will be more transparent and above-board. I am confident that allowing straightforward natural gas transactions in the province will lead to significant improvements in terms of accountability, responsibility and integrity in the industry.

One of the basic principles of transforming energy from two monopoly utility services to one competitive energy market is that customers of the monopoly distribution companies, whether they be gas or electricity, do not cross-subsidize any competitive activities. Cross-subsidization is unacceptable for a number of reasons.

First, distribution customers are vulnerable because they have no choice other than to pay for a monopoly distribution service. They have to be protected from paying for services which are not strictly limited to providing distribution of the commodity.

Second, cross-subsidization creates an unlevel playing field in favour of those who are subsidized. Because they rely on this subsidization, they have an advantage over their competitors who bear all of their own costs. The result is inefficiency and unfair competition.

The Ontario Energy Board is charged with the responsibility under Bill 35 to prevent cross-subsidization. To do this, the board must be able to do at least three things:

- (1) Ensure that the distribution company is providing only a distribution service and not other competitive services;

- (2) Regulate the relationship between the distribution company and other companies to ensure that there are no subsidies; and

- (3) Set the rates for the distribution service to ensure that these rates do not contain any cross-subsidies.

I'll briefly address how Bill 35 addresses each of these matters.

Bill 35 recognizes the need to create pure distribution companies in the electricity context, but not in the gas context. With respect to electricity, Bill 35 provides that Servco, the Ontario Hydro transmission company, and all distribution companies can only provide delivery and transmission services. All other services have to be provided by affiliates.

This principle should also apply to gas. However, the amendments to the Ontario Energy Board Act do not do this. Instead, they only provide the board with the authority to order a delivery company to cease providing "any gas sale service." In other words, the board can order gas distribution companies to no longer sell gas but it cannot order them to no longer provide other competitive services. Other competitive or potentially competitive services include load balancing, backstopping, gas storage, metering, billing and collection.

Both the board and the Market Design Committee have recognized that these types of services may be provided in a competitive market and should therefore not be provided by monopoly distribution companies. Indeed, the Ontario Energy Board's Report on Legislative Change states:

"The board concludes that the legislation should be amended to provide the regulator with the authority to order the LDC to provide services, or cease providing services, such as load balancing and backstopping, where such authority is required to ensure the development or maintenance of a competitive market."

Sunoco agrees that the board should have the power to order the gas distribution utilities to cease providing competitive services. This would follow the pattern in electricity restructuring which provides that electricity distributors only provide a distribution service.

Bill 35 permits the board to establish market rules, including a code of conduct governing the relationship between gas distribution companies and market participants. Codes of conduct are important because they can be used to prevent preferential treatment and the sharing of confidential customer information. Sunoco is therefore very supportive of this initiative. However, there are two points which should be made.

First, it should be made clear that the board may also require electrical transmission and distribution companies to comply with a code of conduct. Bill 35 only specifically refers to codes of conduct for gas distribution companies and electrical generation companies. It does not specifically state that electrical transmission and distribution companies may also be subject to a code of conduct. To avoid arguments and confusion in the future, the board's power should be clarified.

The second concern relates to the procedure which the board should follow to ensure that it takes account of all relevant evidence and all participants' views to produce an effective code. Bill 35 could use a bit of improvement in this regard.

First, Bill 35 provides that the gas distribution companies' codes of conduct be addressed through written submissions, without the possibility of oral hearings. While written submissions will often be sufficient, there will also be cases where the board will be better able to address whether a particular practice results in preferential treatment if it has an oral hearing with evidence on the effects of that practice in the marketplace. For example, if a party claims that advertising a relationship between a distribution company and its affiliate creates customer confusion, it would be helpful, I would think, for the board to hear directly from oral evidence delivered by customers.

Second, and compounding the first problem, Bill 35 requires the board to consult privately with gas distribution companies prior to making or amending rules respecting codes of conduct. In other words, the board is required to consult with the LDCs on their codes of conduct, but other parties are not entitled to either participate in that consultation or to participate through a hearing. They're only entitled to file written comments.

The third component of preventing cross-subsidization is the board's ability to effectively regulate the rates of distribution services so that distribution ratepayers do not subsidize other activities.

Sunoco supports the rate regulation powers given to the board, with one important exception. The board has not been given the power to set rates for municipalities or municipal public utilities that are already distributing gas. Municipal utilities should be subject to rate regulation just as any other distributor; there's simply no reason why they should be exempted. Again, the board recognized this in

its Report on Legislative Change under recommendation number 14. Now more than ever, municipalities are in competition with other energy service providers. They're not exempt from rate regulation for electricity distribution and should equally be subject to rate regulation for gas distribution.

Sunoco strongly supports the government's timetable, as set out in the white paper, for competition in the year 2000. Unfortunately, that timetable is not set out in Bill 35. The only specific timetable set out in the bill is the requirement that municipal electric utilities restructure themselves into new corporations within two years. There is no similar timetable for the restructuring of Ontario Hydro. To the contrary, Bill 35 states that cabinet "may" create new corporations to restructure Ontario Hydro. This requirement is therefore neither mandatory nor subject to a deadline.

Although we recognize that the government may require some flexibility for the whole new system to be put in place, we urge the committee to consider imposing a mandatory timetable on Ontario Hydro which follows the same two-year timetable as for municipal electric utilities' restructuring.

In conclusion, Sunoco supports Bill 35. In our view, Bill 35 will bring openness and transparency to a new, competitive energy market. Sunoco believes that Bill 35 is a major improvement over the current system but would benefit from some very important fine tuning to ensure that ratepayers are protected from cross-subsidizing competitive activities and that the government's commitment to competition in the year 2000 is accomplished.

Thank you for your attention. I'd be pleased to answer any questions which you may have concerning the material we've presented.

The Chair: Thank you very much. We have three minutes for questions from each caucus.

1120

Mr Phillips: I want to focus on the cross-subsidization issue for a minute and put it into terms that will perhaps help us understand the impact of your concerns.

One of the thrusts of the bill is to bring in competition, so in theory we shouldn't be encumbering the competitors unduly. If there is cross-subsidization, presumably somebody is getting the benefit, and if somebody is cross-subsidizing, they are therefore charging somebody too much to charge somebody less than they should be, presumably. In theory, the competitive forces are at play and that organization finds it can't compete where it is charging too high a price to subsidize some other area of the business where they're charging too low a price.

Your comments on cross-subsidization imply potentially a higher level of regulation on the players in the industry. Maybe I've misinterpreted what you've said. Maybe you can just help me. Give me a real-life example of your concern so I can humanize it a little bit, and maybe that makes it easier to try and solve it.

Mr Heath: One area that has been contentious on a number of fronts would be water heating, either electricity or natural gas. Utilities would argue that water heating

provides a baseline load for their system and therefore contributes to the dynamics of how they manage their system and therefore should be viewed as part of the load management system they have, and that if they didn't have water heating their loads would be much more erratic and there would be more fluctuation, resulting in higher prices. Therefore they tend to blend in the rates for their water heaters with the overall rate they charge, allocating costs to different categories.

If, on the other hand, the water heater program were forced to stand on its own merits in another company, then that linkage would be broken and the board would not have to delve into which costs should be allocated to which bucket. It would simply be a matter of saying costs associated with distributing power — gas or electric — go over here and are subject to regulation; costs related to providing a water heater program go over here and are not subject to the purview of the board because they're in the competitive environment.

Mr Phillips: OK. You have experience with residential consumers being able to purchase their gas from a variety of sources. Can you give us an indication from your experience of what this bill is likely to mean for electrical consumers? I realize that's not your business but it would be helpful, you having the experience. What should we expect three years from now or five years from now will be the experience of residential electrical users?

Mr Heath: I think there will be a greater degree of awareness among consumers. After in excess of 10 years of deregulation in the natural gas industry, there are still a number of residential consumers, small-volume consumers who don't understand the complexity or the variety of choices that face them. So the level of customer awareness and consumer awareness will increase dramatically because now both power forms will be available for customers to choose. I think that in three years' time you'll see customers finally starting to understand the variety of choices. Some, like in the telecommunications industry, will long for the good old days when they didn't have any choice and that was just fine because they didn't have to think about it, as compared to today where they've got 40 or 50 different alternatives and they're really trying to find which is the best one for them.

I think the difference is the recognition that monopolistic systems create a one-size-fits-all kind of formulation, where it may not be the best for anyone but it's the best for everyone. Competition creates a variety of small niche markets where different products and services are specifically tailored to individual classes of customers. So the customer who makes lots of long-distance telephone calls will choose a program that benefits them, whereas someone who rarely speaks outside of their own city or community will choose another plan.

The same will happen in power. People will find that there are variances in their energy needs. A family with demands for power at specific times of the day will choose a different program than a small business which has a more constant or flat-load profile. So you'll see the market actually become segmented into a variety of smaller

markets each served by different providers. There will be more choice and a better fit between the needs of the individual customer or business and the marketplace.

Mr Phillips: I already know because we turn the air conditioning on and off at different times in this room.

The Chair: That's so we can hear each other.

Mr Phillips: Oh, is that what it is?

The Chair: That's what it's for. No, sorry, it's strictly so we can hear. Mr Lessard.

Mr Lessard: I'd like to know if Sunoco is interested in getting into the electricity marketing business or any other types of consumer marketing.

Mr Heath: It is our stated intent publicly that we intend to become a retailer of electricity when the market is deregulated, the same as we retail natural gas now.

Mr Lessard: There is an ability to put some sort of firewall protection in, I guess, to ensure that there isn't cross-subsidization between the different aspects of your businesses. Is that something that should be provided for in the legislation or in the regulations, or should it go in the market rules? What influence should the Ontario Energy Board have in determining those rules?

Mr Heath: I think the bill generally lays out that those activities which do not have any competitive basis should be regulated by the Ontario Energy Board. Any marketplace activity that could be provided by one or several providers, and the environment exists where they can compete on an equal basis, should not be regulated by the Ontario Energy Board. The challenge is the transition from a marketplace which was dominated by very few players to a marketplace where there will be very many players. Moving from where we are now to there is the transition which concerns us most. I think the principles as laid out in the bill and the government's white paper are exactly on point.

Ms DeJulio: Can I just add something there? I don't see Sunoco being subject to any kind of questions about cross-subsidization because Sunoco has no intention of getting into services which will be provided on a monopoly basis. Sunoco intends to be active in the competitive market for energy, which might include other services such as metering or billing. We don't intend to be a transmitter or a distributor of any of the energy, which would be the monopoly function. That question of cross-subsidization will apply only to companies that will be providing both monopoly services as well as competitive services.

1130

Mrs Johns: Thank you very much for your presentation. I think today is the first day that we've really had an analysis of the gas-versus-electricity parts of the bill. We would certainly appreciate receiving any of your comments in writing. I know you haven't handed something out today, so we'd like to see those as soon as you could get them together for us.

I just have a couple of comments about your presentation and then I have a question. The government was very concerned about cross-subsidization. We've heard a lot about that over the time that we've met with

stakeholders over the last year and a half, two years, and all the stakeholders we've met have been very concerned about that. I ask you to take and consider a few sections in the act, because we certainly were trying to limit cross-subsidization. In clause 69(2)(f) in the Ontario Energy Board Act we talk about both Servco and the MEUs and how they would be affected by licence requirements. We also do that in section 70 of the act, which takes into effect the Ontario Business Corporations Act. In the Electricity Act we talk about it in subsection 47(4). We believe we have limited the potential of cross-subsidizing. I wonder if you would consider those and give us your best estimate on whether we have done what we wanted to do.

I was interested when you were talking about the people longing for the good old days when they didn't have to make any choice. We think we have covered that by saying there's a default supplier here. If I don't want to put my mind to this, like I haven't in gas, I have to admit, I have the ability to just stay with my good old default supplier and deal with that. We think we've covered that person who longs for the good old days, and if that isn't the case we'd like to hear more from you on that.

I was going to ask the same question as Mr Lessard, so I'm going to go just a little bit further. Now that you've stated your intent to enter the retail marketplace, and we've certainly seen that in the communication, I'm interested in the effect of that entering of the marketplace. Will that create jobs or investment, first of all, in Sarnia or in Ontario? Can you comment a little on how you think that will affect the Ontario marketplace?

Ms DeJulio: I can say that Sunoco right now has quite an expertise in natural gas, less so in electricity, and frankly we're probably going to have to add some staff with some of that expertise. I don't know if that's going to be a significant number of people, but as we expand into the electricity market we will certainly need to beef up our expertise there.

Mr Heath: One of the reasons why Sunoco got into the energy marketing business in the recent past was not only to give customers an alternative and because it appeared to be a good business opportunity given that the industry was changing, but also the fact that Sunoco as a corporation is committed to the province of Ontario. We have significant holdings here in the province. We have a refinery here in town. We have over 300 brand-name gasoline stations. So our commitment is to this province; we cannot take those stations and move them elsewhere.

We're looking at ways in which we can reinforce and improve the competitiveness of Ontario. As we are all too aware, there have been many industries that have said, "The costs of doing business in this province are higher than they are in other jurisdictions and therefore I will move." One of the benefits of legislation which makes energy more competitive in this province is not only the creation of new jobs but the preservation of the ones we've already got. So the exodus to Tennessee and various other jurisdictions which have attracted businesses from this province can be arrested to some extent by providing competitive energy, because if we don't do it

they sure as hell will in other jurisdictions. By the same token, the industrial base in Ontario was built in part on the basis of cheap power. We have to get back to that base because many of our businesses are no longer competing nationally or even on a North American basis. We benchmark our refinery not against the best in Sarnia but the best in the world. Many plants in this province of ours do the same and they must be competitive on that basis.

Mrs Johns: So you believe prices will go down.

Mr Heath: Yes.

Mr Conway: Do you miss that Ontario government ownership of your business?

Mr Heath: Check our stock price.

The Chair: We thank you very much for coming before the committee with your advice. We look forward to further written comments.

WINDSOR UTILITIES COMMISSION

The Chair: Calling now representatives from the Windsor Utilities Commission, please. Good morning. Welcome to the committee. Please begin by introducing yourself.

Mr Kent Edwards: Good morning, Madam Chair, Mr Minister, ladies and gentlemen. My name is Kent Edwards. I'm general manager of the Windsor Utilities Commission. For those of you who may not be familiar with the Windsor Utilities Commission, since the amalgamation of Metro Toronto we're now the largest public utility commission in the province. We supply electricity, water and district energy to Windsor and to some of the surround.

The Windsor Utilities Commission is highly motivated by a drive to foster and develop the primary engine of our local economy, the auto industry. High electricity rate increases were implemented in Ontario in the early 1990s. By comparison, our nearest competitor for energy supply to the auto industry, Detroit Edison, has kept relatively stable rates since the mid-1970s. This caused the gap between Windsor Utilities and Detroit to narrow to insignificant differences, down from a 50% rate advantage in the 1980s. The local auto manufacturers must compete internationally for new products. The loss of advantage in energy cost in Ontario severely erodes our competitive position.

In response to these competitive pressures, power purchase contracts were negotiated by the Windsor Utilities Commission in 1991 to generate power locally, at a price 30% lower than supply from Ontario Hydro. The rest is history. Ontario Hydro exercised monopoly power to prevent this competition. The Ontario Hydro demand-supply plan was scrapped. Policies were reversed on extending the first refusal to local utilities for local generation. This led, in part, to the exodus of two Ontario Hydro chairmen and two Ontario Hydro presidents and prompted the provincial government to impose a rate freeze.

Windsor Utilities has continued to advocate lower prices both through local activities and through increased

actions at the provincial level. The past year, I was elected president of the Municipal Electric Association, which you're familiar with, representing Ontario's municipal electric utilities. Also, our vice-chair, Mr Paul Anderson, is on the MEA board as director representing large utilities in the province.

Many positions and policies were explored by the MEA to provide best service at lowest cost to customers. The MEUs severally, including the Windsor Utilities Commission, and collectively have made representation to government and special committees such as the Macdonald committee to advance the cause of customers. The resources development committee has had opportunity already to hear from the MEA on the broad industry needs, so I don't propose to duplicate that presentation today, for which I'm sure you'll be thankful.

I am presently serving on the Minister's Electricity Transition Committee to provide feedback on industry deregulation issues, and that endeavour is indeed a most positive and productive activity. The guidelines set out in the white paper and carried forward to Bill 35 set the terms of reference; however, on some issues they also limit the scope of the options available to the committee. Nevertheless, Mr Minister, I appreciate the opportunity to assist and participate on that committee and I am committed to make it work no matter what guidelines are imposed, in order that consumers may get full advantage.

I appear before you today, however, to express the concerns and recommendations of the Windsor Utilities Commission. The objective of the Windsor Utilities Commission parallels the title of Bill 35: "to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment" etc. Our commission is concerned that the framework set out in Bill 35 will not achieve these goals to the extent that is so urgent to Windsor customers. Our recommendations are presented today to strengthen Bill 35 and hasten the achievement of the bill's underlying objectives.

We have been a leader in the deregulation movement by introducing significant competition from lower-cost, cleaner generation. Unfortunately, when it became apparent that Ontario Hydro generation was not competitive, those most dependent on their own wellbeing for the continuance of Ontario Hydro rose to the monopoly utility's defence. Ontario Hydro's management mounted the ramparts to defend the monopoly and Hydro's unions launched a successful media campaign disclaiming privatization of any part of Ontario Hydro.

1140

These powerful forces did influence public opinion, limiting in part the government's options to proceed with full competition. Bill 35 has not, therefore, proceeded to further divide Ontario Hydro generation into more competitive units as recommended by the Macdonald committee. Bill 35 leaves up to 95% of the province's generation together and in public hands.

As Bill 35 has been brought forward, our concern has mounted that failure to require Ontario Hydro to divest of a large part of its generation to create true competition

will not achieve the full objective of the bill. Government ownership will continue to leave our community at risk of further failure of the Ontario Hydro generation fleet. If these units fail to perform effectively, our customers will be asked to bear further losses. As presently set out in Bill 35, there is no alternative. Customers continue to hold the risk of further generation failures at a time when the competitive advantages of generation from our natural resources have already been fully exploited. Any further failure by Ontario Hydro will expose our customers, and Windsor's economy, to unacceptable risk. Continuing the Ontario Electricity Generation Corp as a single entity without any fundamental monopoly need, or advantage, into an open and competitive marketplace with private, unregulated competition is courting disaster far outweighing any potential benefits.

We think that conditions have changed since the inception of the white paper and Bill 35. Certainly, the unions have reconsidered their opposition to privatization, as evidenced by the Power Workers Union offer to purchase Bruce nuclear station through investment of pension funds.

If the public is to have a choice of suppliers, then there must be many choices of suppliers available. One choice is no choice and the public will not be fooled. Public understanding of the issues I think continues to grow and provide support. There is no need to expose Ontario consumers to an uncertain future of second-best solutions.

The excellent work of the Market Design Committee will indeed create a market, and we commend the government for facilitating stakeholder participation in setting the market rules. However, the underlying costs of generation that form the overwhelming share of the customer's bill will be insulated from the true benefits of competition. The limits on further subdivision of generation have caused the Market Design Committee to consider shielding up to 85% of Ontario's generation from true competition through vesting contracts. Under this scenario, Windsor does not expect to see needed rate reductions as a benefit of electric industry deregulation. Even the Market Design Committee, in its second interim report, concludes that their solutions are second-best to divestiture of generation, which is not permitted within the committee's terms of reference. I fear that the necessary conditions recommended by the Market Design Committee to control market power will also stifle creativity and efficiency of government-owned generation, leading to even further deterioration of those assets.

We think there are solutions available to the government to further the goals set out in Bill 35. The Windsor Utilities Commission recommends that the new Ontario Electricity Generation Corp be given a clear directive and mandate within Bill 35 to rationalize its assets and operations for subsequent divestiture of generation in Ontario in a manner best meeting the goals of competition and consumer value. Experience elsewhere has clearly shown that the compensation received for sale of generation assets may be expected to exceed book value, and can be applied to reduce the significant debt to be held by

the Ontario Hydro Financial Corp, while enhancing the goal of competition.

The Windsor Utilities Commission recommends further that Bill 35 should charge OEGC, the successor generating company, to provide a recommendation to the government on the best course to achieve the mandate of divestiture in the year 2000. Unless the successor generation company is clearly mandated in this manner, we can only predict that the continuation of that company will prevent real competition and increase the risk that publicly owned generation imposes on consumers.

Until full competition in generation is achieved, our utility will continue to be concerned for the erosion of our base automotive industry, with loss of jobs and economic strains on our community. No time should be lost to achieve this goal of full competition and removal of the risks of ownership from unsuspecting consumers.

Now I'd like to turn to the new Windsor Utilities Corp, as envisioned in Bill 35. In most respects, Bill 35 supports the objectives of the Windsor Utilities Commission. We have advocated for utilities to be placed under the Ontario Business Corporations Act and have supported full, open competition of non-monopoly affiliates without recourse to subsidy from our monopoly infrastructure system. We have, however, two requests that we put before the government to level the playing field with our new competitors. We recommend that the restrictions to be placed on affiliates under section 72 of the proposed Ontario Energy Board Act be relaxed. We further recommend that competitive affiliates be placed under the equivalent rules for payments in lieu of income tax as our competitors.

The strength of the municipal utilities is their knowledge of their customers and their customers' needs. Following commodification of electric energy, energy alone will be a low-margin, highly competitive product. There will be a limited market advantage and unlimited risks, best suited to big players in the electric commodity markets. The municipal utility affiliates will engage the assistance of deep-pocket partners to compete in these markets. The niche role of the utility affiliates will be to bring value added services to utility customers. This requires bringing a full service package to customers, tailored to their specific needs. This is a role not well filled by the large international marketers.

Unfortunately section 72 limits dramatically the scope available to retail affiliates to service total customer needs. I'm reminded of the error of the early railroad industrialists who mistakenly defined their business as railroads and not transportation, preventing them from fully integrating transportation services. The municipal utilities cannot be limited to wires or electricity, as proposed in section 72. Our competitors will not be so constrained.

Our customers need energy and related utility services in all forms. Our competitors will displace our competitive affiliates through their ability to provide total utility services. Our customers need flexibility for the provision of all utility infrastructure and utility infrastructure serv-

ices. Our affiliates must have opportunity to participate in alliances to provide all utility infrastructures and commodities, inclusive of electricity, natural gas, telecommunications, water and sewerage. Section 72 limitations will restrict the new Windsor Utilities Corp from maximizing service, economies of scope and scale, and skills for the benefit of our customers and our community.

For similar reasons, we ask that the new Windsor Utilities Corp face equivalent tax rules as our competitors do. We seek to avoid both an advantaged position or a disadvantaged position. We wish to compete within the same rules. Bill 35 proposes payment in lieu of income tax to the Ontario Hydro Financial Corp based on a percentage of adjusted gross revenue. We recommend that payments by municipal electric utilities must be patterned simply on the same formula as corporations not exempt from the Income Tax Act.

To conclude, I want to express the appreciation of the Windsor Utilities Commission for the government's initiative and dedication to introduce needed competition into the electricity supply industry. Our recommendations are submitted to be constructive. Our expertise and leadership in the industry is well proven. The government has taken courageous measures to initiate competition. We believe electricity consumers, the Ontario economy and Windsor will be best served if the government takes full measures now to gain the maximum benefits of competition without unnecessary delay. We look for the government's support of these recommendations to strengthen Bill 35. I have summarized those. I'll leave those for you. I'm prepared to take questions.

1150

The Chair: Thank you very much. We have four minutes for questions from each caucus, and we begin with Mr Lessard.

Mr Lessard: Thank you very much, Mr Edwards. It's a pleasure to see you here in Sarnia. As one of your customers, I'm pleased that you took the time to make your comments known to the committee. The Windsor Utilities Commission has always been innovative and creative and aggressive. I like to think that part of that is a result of my uncle's involvement on the commission for many, many years. He is not currently there. However, I respect and I know the minister respects a great deal your opinions with respect to the changes that are contemplated.

It's because of that that I want to focus on section 72, that you spent a great deal of time discussing, the restrictions that is going to place on the new Windsor Utilities Corp. I'd ask you whether you can speculate for me, if you will, about why the provision is set up the way it is, why the percentage, 50% — and you're suggesting this whole section should be gone. Why would the government pick 50% ownership as the criterion for the restriction in different businesses? I've been trying to understand this for the last week and a half that I've been listening to presentations to this committee, but I can't understand it.

Mr Edwards: I have no answer for the question. The 50% target is simply a part of the bill. There was also a

10% or a 20% target dealing with ownership that is a tax issue. I don't know the basis for the 50%.

We just had a presentation from Sunoco indicating their intention to get into retailing electricity in competition with the utilities, which also will be retailing electricity, but section 72 could well be interpreted to indicate that the utilities could not also retail natural gas.

Mr Lessard: The other question I have is with respect to the divestiture of the assets of the Ontario Electricity Generation Corp, Genco. You've suggested that it should be Genco's mandate to come up with a recommendation for the government.

I was wondering whether that might not be better left as a responsibility for the Ontario Energy Board and for the energy board perhaps to be involved in the valuation of the assets of Genco as well. Don't you think there would be a conflict of interest if Genco were the ones who were supposed to come up with a recommendation on divestiture?

Mr Edwards: Keeping in mind that it is a recommendation — and I don't wish to make light of the skills available inside Ontario Hydro; they have been a very successful company for a very large number of years — I think they best understand their business and best know their business. I fear that their motivation under Bill 35 as it stands will either be to grow and stifle competition, or it will be one of non-direction; that is, waiting for them to succumb to competitive pressures over time due to limitations that are being proposed by the Market Design Committee. If we can launch the new corporation with a clear mandate, with a goal, they will work towards structuring it in the best interests of the consumers.

Mr Gilchrist: Thank you, Mr Edwards. I appreciate your making the trek up here and your comments, particularly your very supportive comments about the direction we're heading and your expression of the accommodation to make sure that your views and other MEUs' are being heard as the Market Design Committee and the ETC do their good work. We appreciate your involvement there as well.

What I'd like to touch on, because we just have a couple of minutes, is the issue of Genco's ongoing power, as you see it. I guess first off I could say that both the OEB and the IMO will have the ability to set rules, different aspects of how they can control any potential abuse, as they see it, in the marketplace. But the OEB, through its licensing, and the IMO in terms of the market rules it set up have all the tools to ensure that Genco continues to be reined in, in the sense that it won't be able to abuse it.

But I'm intrigued, and you may have heard me allude to it earlier to an earlier presenter — let me very quickly read to you and invite your responses. I have to take from the comments we get from different MEUs that Genco is so big that everyone else will be scared away, nobody will come in, there's no competition.

"Ontario's move to set up a competitive electricity market by 2000 has encouraged plans for another

cogeneration project. Sentinel Power Corp has said yesterday it will build a 100-megawatt cogeneration plant in Sarnia. Construction of the \$100-million project is to begin in early 1999 and is scheduled to be completed by 2000 to coincide with the start-up of the new market.

"The plant will include two 50-megawatt generation units. One will create fuel from pellets pressed out of processed municipal solid waste and hydrocarbon residue that's a by-product of oil refining. The other will use natural gas that's burned off as refinery waste at present."

That's an extraordinary technological leap forward, environmental good things being done, \$100-million investments. It goes on further to say 500 construction jobs, 80 permanent jobs, and that's over and above the 520-megawatt TransAlta plan that's already been announced.

Given the demand here in Sarnia right now, those two projects alone would take 25% off Hydro's back. Why would we have any reason to believe that this is just the tip of the iceberg? Why would we believe that these are unique and that somehow no one else is going to be prepared to pony up the money and the ideas to take on Genco and in fact would be scared away by what you see in Bill 35?

Mr Edwards: Let me take your issues one at a time. On the issue of market power, I agree with you. I believe what the Market Design Committee is proposing will control Ontario Hydro's market power. It will not, however, expose Ontario Hydro to competition, so the benefits of competition in generation will not flow through into lower rates. They will be locked-in rates under vesting contracts or whatever rules are ultimately decided. The rules will aid to prevent Ontario Hydro from exercising market power in preventing competition. I agree with you to that point.

I think Genco being reined in, however, is perhaps a deterrent for the organization to perform in the most efficient and entrepreneurial and effective way, so the benefits of cost reductions that should come from generation are not likely to be seen in Ontario for some period of time.

On the issue of the cogeneration projects that are announced in Sarnia — and I can tell you there are a number of others proposed across the province, including Windsor — first you have to look at them in context. The 500-megawatts, first of all, is a drop in the bucket in the context of Ontario's total generation. Second, you have to stand back from this issue and say, there is competition. That means there are going to be winners and there are going to be losers. If TransAlta and the other corporation proposing to locate in Sarnia are successful, who is the loser? It's the rest of the generation in the province. And who owns the rest of the generation in the province? You and I and all of our customers.

Mr Gilchrist: How will Hydro respond?

Mr Edwards: What I would propose is that if the risk of managing those assets is put on the same footing as the TransAlta cogeneration etc, then let competition prevail.

Mr Conway: Thank you, Mr Edwards. A very good presentation and a very good exchange, which I certainly enjoyed.

I've got two questions. Surely the problem we have in the short term is how we are going to manage, in a sensible, safe and prudent way, the great experiment that didn't work out as it was advertised to work out 30 years ago, the nuclear commitment? Ontario Hydro, as it stands today, is largely a nuclear company, with a lot of trouble and a lot of debt and some very difficult choices. How do you propose that we get through the night with that problem?

It seems to me that down the road five or 10 years, for the reasons Mr Gilchrist and others have advanced, there is some real hope. But I am struggling with, what do we do with — much of the debate focuses on stranded debt, but a lot of the stranded debt and residual debt is going to really attach to the fundamental problem. What do we do with the multi-billion-dollar, underperforming nuclear power division?

Mr Edwards: There are a number of issues and you're probably aware of some of my views from your work on the committee that investigated the nuclear issues.

First of all, I do have some background in nuclear and I have great faith in the technology. I do not think it has been properly managed, it has not been properly maintained, and certainly at the present time it has been largely responsible for pushing up the rates into a non-competitive area, causing all this to happen.

The nearest parallel I can draw on is the UK, in which case they ultimately privatized the nuclear. Although they said, "Hands off; you can't do this: it's not practical, it's not safe, it's not prudent," they proved it was and that it could be done.

I think leaving those plants under the control of a corporation that is not strongly motivated to be efficient, to be productive, continues to put us at risk, and we have to find ways to move that risk off the customer's shoulders.

1200

Mr Conway: We come back, then, to one of the central points of your presentation, which is divestiture beyond what we've got in the package of proposals and legislation to date.

Mr Edwards: Much beyond what we have in the package to date.

Mr Conway: I think you make a very powerful argument there, because notwithstanding what those of us in the committee might say, the two independent panels of experts — the Market Design Committee in July and the Macdonald group of two and a half years ago — both said that absolutely central to delivering the benefits through competition to all customers is disaggregation. You've got to break it up in a variety of ways, because anything with the kind of market power that Genco's got is going to frustrate it in ways that you've indicated.

I think we're all agreed on the objective. Everybody here believes that true competition, reasonable competition, will deliver the benefits. That's agreed to. But our

problem, my problem at least, is that I don't see this bill as currently written, with the allied policy documents, meeting the minimum test that Macdonald and the Market Design Committee have both indicated.

We can make all the savings we want on 5% or 10% of distribution, and we need those and we want those, but if we don't deal with the 70% or 80% of the bill — Guelph Hydro told us that 88% of their cost is the cost of power. What do you recall Macdonald saying about the treatment of assets that might move from Ontario Hydro retail over to distribution assets, that might move from Ontario Hydro retail to an expanded MEU? Do you have any memory of what the deliberations of the Macdonald committee were on that, keeping in mind what Macdonald in the end recommended, that there had to be many fewer distributors, particularly in southern Ontario, and that ideally there should be shoulder-to-shoulder MEUs, with Ontario Hydro retail basically retreating from the field?

Mr Edwards: Let me answer all three of your issues. The market test, as the bill is presently constructed, I think cannot be met. We've made a proposal. I don't think this is an issue that can be addressed in very broad terms. It needs some detailed study. It needs to have the generation critically looked at, to be rationalized to create a competitive situation in Ontario that will benefit consumers in the best possible way. I think our proposals address that issue and suggest that can be done.

On cost of power, we get great synergy of scope and scale out of operating multiple utilities. I commend Guelph for getting down to only 88% as cost of power. That leaves 12% as their own gross margin. Ours is down in the 8% to 10% because we get the benefits of scale and scope out of operating water and district energy, those kinds of things. That's going to be a little more difficult in future, depending on how we actually structure the new corporation and whether we're able to continue to do that.

On the retail assets, I believe you answered the question, if I understood it correctly. Macdonald suggested shoulder-to-shoulder municipal utilities to operate the distribution system.

Mr Conway: But how do we value the assets? The key question there is that if that's going to happen, how do you treat the valuation of assets that move from one part of the public power system to the other?

Mr Edwards: As I recall Macdonald, and I stand to be corrected, it was the net value formula, not at market value as currently proposed. I certainly have heard the presentations this morning suggesting that that would create a double payment for those customers who are involved in amalgamation. Paying market value when they've already contributed equity through rates is a double payment. If we don't amalgamate, I suppose I can thank those customers for subsidizing my utility, but I don't think that's the intent.

The Chair: On that note, we thank you very much for coming before us with your advice.

Mrs Johns: I have a point of clarification. On the Market Design Committee are two representatives of the municipal electric utilities. Karl Wahl is the representative

from Mississauga Hydro. There are two members of the MEUs on the electricity transition committee also. I believe the other gentleman's name is Bob Lake.

Mr Edwards: Bob Davie.

Mrs Johns: Bob Davie. Could we change that? He'll be very upset. He's from Collingwood, I believe.

The Chair: We are facing a very short time line. There are a number of people expecting us to be in certain places in a very few minutes. If you are part of the group that is making a trek over the lunch hour, I suggest you be at the front door in the next few minutes. We are leaving.

We are recessed until 1:30.

The committee recessed from 1206 to 1331.

CITIZENS ENVIRONMENT ALLIANCE OF SOUTHWESTERN ONTARIO

The Chair: We're pleased to welcome our first presenter this afternoon, the Citizens Environment Alliance of Southwestern Ontario. Welcome, sir. We're very pleased you're able to join us this afternoon.

Mr Rick Coronado: My name is Rick Coronado. I'm the research director for the Citizens Environment Alliance of Southwestern Ontario. We also have an office in southeastern Michigan, so we are a binational grass-roots organization that has been in existence since 1985.

I'm here today to make some brief comments on Bill 35, the Energy Competition Act. I'll begin with my introduction and then I'll discuss some background on some of the issues.

Ontario Hydro is in a crisis: This is the conclusion of the independent integrated performance assessment. They stated that the state of Ontario nuclear reactors was minimally acceptable. As a result, Ontario Hydro adopted the nuclear asset optimization plan. The main feature of this plan was the temporary shutdown of four Pickering A reactors at the end of 1997 and the three remaining Bruce A reactors on March 31, 1998.

Ontario Hydro refuses to invest in cleaner energy sources. Hydro is committed, as part of this plan, to restart the four Pickering A reactors between 2003 and 2009. While refusing to commit to cleaner green energy, Hydro has replaced the nuclear stations with coal-fired plants, resulting in increases of ozone particulate and greenhouse gases and other hazardous air pollutants.

This is the worst of all possible worlds and the blame is pointed at Hydro and its cronies for dirty coal and then the ongoing commitment to expensive, risky nuclear power. Ontario Hydro is ignoring the truly sustainable alternatives: efficiency, conservation and renewable.

Some of the background to these issues that I want to briefly discuss are the importance of a permanent shutdown of Pickering A and Bruce A nuclear stations, and the importance of not allowing Ontario Hydro to pass on its stranded debt to consumers while continuing to operate dirty coal and dangerous nuclear stations.

Some of the green environmental points: a renewable energy portfolio, a systems benefit charge, disclosure,

caps on fossil emissions and the requirement that there be a nuclear decommissioning and waste management fund.

The issues: The most important background issue is to permanently shut down the Pickering A and Bruce A nuclear stations. Nothing in Bill 35 speaks to this, but it is the underlying issue that directly or indirectly affects all of the other environmental issues, as well as the fundamental problem of Ontario Hydro's continuing market dominance in the generating business. Restarting eight reactors will perpetrate the day-to-day emissions of radioactive pollutants such as tritium and increase stockpiles of deadly radioactive waste. Currently, Hydro's liabilities are \$47 billion, with \$15 billion for radioactive waste management.

The second important issue is Ontario Hydro's stranded debt. This stranded debt is effectively a subsidy to the nuclear and coal-generating capacity of the Ontario Electricity Generation Corp, OEGC, and an impediment to the creation of new, greener, cheaper generating sources. The greater the residual debt, the greater the threat to the efficiency and competitiveness of the new market.

What's missing from the legislation? The Energy Competition Act leaves out some important areas; for example, a renewable portfolio standard, a mandatory renewable energy quota that all electricity producers must either purchase or produce. Currently in the US there are several states that have this in place, as well as the US nationally.

System benefits charge: A system benefits charge provides funding for conservation, efficiency and renewable energy research and development through a special charge on electricity.

Caps on fossil emissions: There is a provision in the bill, but is there the political will? This cap should be applied to all electrical generating plants. The entire electricity sector must be regulated. By imposing caps significantly below current levels of air pollution, the Ontario government can ensure that their restructuring process will help to clean up our air and will contribute to Canada's Kyoto commitment to reduce emissions of greenhouse gases.

There's a need for disclosure and electricity labels. The disclosure of information on the generating fuel sources and pollutant emissions from those sources will allow consumers to make informed choices on their electricity purchases. Disclosure and labelling are fundamental to allow for green power marketing as well as the promotion of renewable energy sources.

There's also a need for radioactive emissions caps. In addition to fossil emissions caps, Ontario should also apply caps to radioactive pollutant emissions from nuclear facilities. The current objective for tritium in drinking water is 7,000 becquerels per litre. The standard should be much tighter, starting with 100 becquerels per litre, and be further reduced to 20 becquerels per litre after five years. Currently, the background level of tritium in the Great Lakes is below 10 becquerels per litre.

The creation of a decommissioning and radioactive waste management fund: Bill 35 should require the crea-

tion of a real, independently controlled fund for reactor decommissioning and nuclear waste management. This fund should also contribute to a workers' fund for job adjustment, such as re-education, early retirement and pension credits.

There are two other green environmental points I want to further elaborate on, the renewable portfolio standard and the system benefits charge.

A renewable portfolio standard requires generation companies or retail electricity suppliers to provide a specified amount of their generation or sales from renewable sources. Note that it generally applies to energy rather than capacity. Although not essential, an RPS can include a secondary market in renewable energy credits, providing a flexible market-based approach for achieving a valuable environmental benefit: the promotion of renewable energy at the lowest possible cost. This makes a logical and compatible companion program for a system benefits charge, which is typically used to fund conservation and efficiency programs as well as research, development and commercialization of new renewable energy technologies.

Finally, the systems benefit charge: Throughout the 1980s and early 1990s, utilities across North America were required to adopt demand-side management programs as part of the integrated resource planning programs. Restructuring or impending restructuring has thrown these programs into disarray. For example, here in Ontario, Ontario Hydro performed yet another about-face and abandoned its conservation programs in a headlong rush to sell more electricity.

1340

I might add that Ontario shouldn't feel bad because Michigan has done the same thing. We recently won round one at the shutdown of a facility on the international border between Detroit and Windsor: the Conners Creek coal-fired plant. Basically that plant is there, and Detroit Edison is attempting to run it, for the simple reason that in their deposition to the Michigan Public Service Commission they suggested that it was cheaper to generate electricity than it was to conserve it. They cancelled their demand-side management programs in 1996.

In 1996 Hydro wrote off \$398 million in demand-side management investment. However, the rationale for demand-side management programs has not disappeared. Inefficient use of electricity is widespread and clearly there are cost-effective efficiency measures that are not being implemented due to market barriers. The most obvious barrier is Ontario Hydro's monopoly. Since Hydro's generating monopoly will not be broken up in the impending restructuring, this will continue to be a problem. Other barriers include inadequate market information and promotion; inadequate financing for efficiency measures; absence of metering for real-time prices; bulk metering; split incentives between purchases of equipment and users; flat-rate metering for water heaters; and unavailability of efficient equipment.

That's basically my presentation. I didn't bring anything to hand out. I have a summary of my comments

which I can make available to the committee before the 20th. I also have a copy of the current program we are working on with Greenpeace called the solar city. Solar energy is available now to phase out fossil fuels and nuclear power. A lot of organizations such as ours are working with Greenpeace on this program. I want to add that this program is important to a lot of us for the simple reason that the design of this plan could create 3,000 jobs. It also could produce annually over 500 megawatts of solar power. That ends my formal presentation.

The Chair: Thank you very much. You have left five minutes for questions from each caucus. We'll begin with the government.

Mr Galt: Thank you for your presentation and being here today. Maybe you could start by telling us a bit about your organization. How long has it been organized?

Mr Coronado: Citizens Environment Alliance came into being in 1985. We're based in Windsor and we also just set up an office in Detroit. We are now a bi-national —

Mr Galt: Now it's international. How many would belong to it?

Mr Coronado: If you count all the organizations and individual members, it's probably 40,000.

Mr Galt: You talked a lot about renewable energy and replacing some of our energy with electricity supplied by wind and solar. What percent of the total electricity being produced in Ontario could be replaced by wind and solar energy in your opinion?

Mr Coronado: That's a good question. I don't know. I think between demand-side management, solar in some areas, wind in others; it's a combination of all those things. I don't know exactly what the percent —

Mr Galt: Do you think it'd be below 50%, over 50%?

Mr Coronado: Currently, right now, I couldn't tell you. I don't know what we would target. I would say that a lot of companies like Ford and Chrysler have experimented with solar. In Windsor we have five cogenerating plants: Chrysler, the University of Windsor and a number of other places. There is a tendency now to try to move to a fossil that has less carbon content and also to solar. We've worked with Ontario Hydro on an integrated management plan in the last several years in the Windsor area. That question came up several times. I think there needs to be more study on the availability and the geographical locations for solar. But I think there were some significant studies done in that area back in the 1940s and 1950s. Maybe some of those studies need to be brushed off and brought into the light of day now.

Mr Galt: When it comes to the environmental area, this particular bill is essentially enabling legislation. The government's certainly encouraging and will be writing regulations in most of the areas you're referring to. Have you seen in the legislation anywhere that it would interfere with some of the thrusts you're putting forward?

Mr Coronado: I think the whole program Ontario Hydro is laying out now is going to perpetuate their nuclear program. It's going to hinder development of green energy. The entire environmental community is

certainly pushing for that. I understand that Greenpeace in their hearing on the 11th had 1,800 crosses put in the grass outside the hearing. That's one of the issues we are pushing. We've seen the Ontario Medical Association report. I come from an area where traditionally air quality has been very bad for many years. We think we need to be moving to cleaner energy, to demand-side management. It's a combination of those things. I don't think it's a difficult problem, but it's getting Ontario Hydro out of its monopoly and starting to invest in that. That's where the future of the job market is as well.

Mr Galt: The group that put the 1,800 crosses on the front lawn of the Legislature, I suggest, was to raise funds for the organization. It had nothing to do with doing something about this particular bill. I questioned you on —

Mr Coronado: I'm not sure I understand the question — 1,800 crosses.

Mr Galt: Is there anything in the legislation that would block what you are suggesting we do here?

Mr Coronado: How would you raise funds with 1,800 crosses on the lawn? What were they doing, charging for people to put their crosses on the lawn? There are 1,800 people who die in this province every year according to the health statistics. Are you telling me that those 1,800 crosses were just a ploy? That was to bring the issue across to the people.

Mr Galt: They were out there to develop the emotional issue to raise funds for their organization.

Mr Coronado: That's why we're here. I'd also suggest to you that maybe the agenda's already been set.

Mr Galt: I asked you a question earlier on the legislation and you sidetracked to Ontario Hydro. Is there anything you have read in the legislation that would block the kinds of things you were suggesting?

Mr Coronado: I already told you.

Mr Galt: Where is it in this proposed bill? Could you give me the section?

Mr Coronado: I can't give you the section; I didn't bring the bill with me.

Mr Galt: You made reference to Ontario Hydro and their nuclear production. But I was looking for: What's in Bill 35 that would block any of the efforts, any of the thrusts that you're suggesting?

Mr Coronado: That's the problem; it's not in the bill.

Mr Galt: It's enabling legislation. We're interested in groups such as yours being involved in consultation to write these regulations.

Mr Coronado: I think the message we're trying to bring across —

Mr Galt: Would you be interested in being part of the consultation?

Mr Coronado: We want to see a going away from nuclear; we want to see less investment in nuclear; we want to see it phased out. We don't want to see \$47 billion, \$15 billion of it going into nuclear management, going into another nuclear program that's just going to perpetuate, as I've already pointed out. We don't want that anymore. We think there are ways of getting around

that, saving lives, cleaning up the air, cleaning up the environment and having clean energy production.

Mr Galt: It may be of interest to you to be aware that at present there's nothing in the present legislation — I'm not talking about Bill 35; it's already what the Ontario government has — to allow green power on to the grid; however, it's wide open to bringing in power from the States that may be produced from some of the dirtiest plants in Ohio. Certainly, this bill is moving a long way environmentally.

Mr Coronado: Good. We'll certainly keep an eye on it. What we mentioned about caps and electricity labels is hopefully going to be in the bill because consumers are going to want to know where that power's being bought. If we're buying dirty energy from places like Conners Creek or from other coal-fired plants in the United States, then we want to know about it and give the consumer the opportunity not to buy it.

Mr Galt: It'll certainly be in the regulations related to this bill, no question.

Mr Conway: Mr Coronado, thank you for your views and the vigour and tenacity with which you evidently are prepared to advance them. Do you see green power as providing much of the baseload power for the industrial economy that is modern Ontario?

Mr Coronado: I see that at this point in time we're moving away from fossil; we're getting into natural gas. Windsor has five cogenerating plants. Chrysler has a cogenerating plant. Ford has a cogenerating plant. Ford many years ago had a solar wall at their factory in Windsor but got off it because it was cheaper to buy natural gas. To answer your question, I think the bulk of it now could be covered probably by cogeneration.

Mr Conway: I think there's a lot of interest, and you're fairly telling in your criticism about the nuclear commitment that has clearly not worked out as was expected, but we do have a requirement obviously to meet the needs of a diverse and large economic and social community. There is widespread interest in more green power; I don't think there's any question.

1350

One of the problems that I see in looking at the literature elsewhere is the market. The market under this policy is, I think rightly, intended to determine price and in many ways determine the method by which we generate electricity. Right now, for example, natural gas is very attractive. It's available; it's attractively priced; we've got the technology.

How do we deal with a situation where it might be natural gas, it might be — the price of oil today is such that if it were to stay at US\$13 or US\$14, that would be attractive in ways that it wouldn't have been 10 or 15 years ago. The difficulty is the prices don't stay put. There are always behaviours in the market that nobody quite advertises.

My concern about green power is, in a market that's as volatile as this energy market, how do we on the one hand let the market decide and on the other hand provide an opportunity for green power to get its head up over some

of the competition which may have significant advantages over a short-term period?

Mr Coronado: Let me answer it this way, Mr Conway: One thing I did leave out is photovoltaic cells. Ford has invested \$400 million; Mercedes-Chrysler is going in the same direction. We realize that in the next five to 10 years, the steel industry, the auto industry and the chemical industry are going to be stood on their heads because there are vast changes coming. The companies are way ahead of you people at Queen's Park. They know where they want to go; they know where they want to save money. We have to get there too, and I think that's where we want to go with green power.

Photovoltaic is the thing of the future. There is both stationary development for the photovoltaic cells and also transportation and mobile.

Mr Conway: I'm out someplace in mid-northern Ontario. I've got a lot of winter and I've got a lot of moose pasture, and I want to be environmentally responsible. I haven't got any natural gas anywhere near me. By the way, I might have some hydroelectric power that I don't really like, because there's a lot of preaching going on about its appeal, but I get the crap. I get the up and down of the creek and the river and all the rest of it, so I may not be as warm and fuzzy in my attitudes to hydroelectric power as people who live in Windsor, who don't actually get the results that I get on my front porch.

What are the answers for people living in rural Canada, northern Ontario, in this whole green power debate?

Mr Coronado: We have an office in Lindsay. It's actually a suboffice for our waste management organization. That whole place is run on solar and wind, their computers, their washing machines, everything. They back it up with batteries right now, but the entire facility is run. There is no electrical wiring going into that place.

Mr Conway: What kind of demand do you have at the office? Is it significant? Could we expand it into a larger part of, say, metro Lindsay?

Mr Coronado: Sure. Why not?

Mr Conway: It's a serious question. Could you do it?

Mr Coronado: Sure, if we had the investment to develop solar. You know, in 1974 there was a book that came out in the United States that was endorsed by the UAW, because they did the mathematics on the assembly and installation of solar panels and what it would mean for the development of solar panels and the manufacture of solar panels for every house and every building in the United States. That math is still pretty sound.

Mr Conway: I know, but my problem is that Georgia isn't Chapeau. It's a very serious issue. This energy debate — I'm always struck by the number of people who just seem to believe that southern California is Timmins. Pelee Island is a pretty salubrious climate, but it's not my part of the world. I'm interested and I want more of this green power, but one of the concerns that I sense from talking to my constituents is reliability, particularly during long, deep, cold winters.

Mr Coronado: So what are you suggesting?

Mr Conway: You have rightly pointed out that some of the failed experiments of the past have left us with a bit of a mess. In moving forward with green power there are a couple of things that I see as problems — and there are obviously opportunities — but one of them is the market. I'm not sure that we have yet figured out a way to price this commodity to fairly take into account downstream environmental degradation. I don't sense that the current price of the commodity takes that into account, and I think that hurts green power, to be perfectly frank. I don't have any easy answers.

Mr Coronado: I'm not sure I understand that.

The Chair: While we think on that, we're moving to Mr Lessard.

Mr Lessard: I'll try and follow up from there and talk about some of the concerns I have about the market, ensuring that there are more green and renewable energy options for the residential consumer, which is really where we want to see this heading. The government keeps saying that this is enabling legislation: "Wait for the regulations. It's going to be great for the environment."

One of the things you said that struck me was the Conners Creek example — that's a power plant in Detroit, right across from my riding as a matter of fact — that without a lot of intervention by your organization and others, it may be spewing out dirty coal emissions in order to meet Detroit Edison's peak power demands. They have appealed that decision not permitting them to operate, and it may be that next summer they start that plant up.

One of the things that we don't want to encourage is the generation of cheap coal-fired power in Detroit or in Ohio and end up with the emissions coming back across into Ontario. In moving to a competitive market, the price is going to be determined by the market, and I think that people will pay a premium for renewable energy options but there is a limit to that. Mr Galt is saying, "Is there anything to prevent people from making those choices or suppliers providing those?" Do you think without that commitment or the provisions in the legislation to have a renewable energy portfolio standard required, something like that, that people will pursue those options for renewable power if there isn't some requirement in the legislation? Will it develop as a feasible market in the future?

Mr Coronado: No. As I said in my remarks, the things that are missing in the legislation are just the very things you're mentioning: renewable portfolio standard, a system benefits charge, disclosure in electricity labelling, those types of things. Without those things in the legislation, Ontario Hydro is going to carry on to do what it does best, run up debt and continue to carry the population of this province further down the stream.

We had a report, as I mentioned in the introduction, that said that the nuclear program in Ontario was minimally acceptable. They're talking about billions and billions of dollars to be invested to go ahead to continue this monopoly. I'd be the first one to say that years ago when I was in political science in university, I thought monopolies were a great idea and I thought Ontario Hydro

was a very good example of a crown corporation, but I have since had the opportunity to change my mind.

Mr Lessard: You're not alone.

Mr Coronado: But again, there are different ways of going about it. With the help of the environmental community, with the help of the health community, if the mathematics are done right and we look at serious cost-benefit analysis, we can actually show where energy conservation renewables can lead us out of this nuclear wilderness of coal-burning and nuclear reactors.

Mr Lessard: You mentioned the example of Greenpeace projects that you're involved in. I'm familiar with another one as well, and that's with respect to energy-efficient refrigerators that are CFC-free that they're involved with in Europe. I wonder why we don't have programs and options like that available in Ontario. Even though my friends will say there are no restrictions in this legislation, I ask, why is it that we don't have those options now in Ontario? Do you see us expanding those sorts of options for consumers in the future based on what you see in Bill 35?

Mr Coronado: Yes, I do.

The Chair: Mr Coronado, on that note we thank you on behalf of the committee for taking time to come before us with your views. They are much appreciated and will be considered.

1400

TRANSALTA CORP

The Chair: Calling now representatives from TransAlta Energy Corp, please. Good afternoon and welcome to the committee.

Mr Jim Dinning: Thank you, Madam Chair. My name is Jim Dinning, and I'm here representing TransAlta Corp. I serve as the executive vice-president of energy marketing for the company. I'm joined, on my left here, by someone we call Mr TransAlta in Ontario, Mr Barry Chuddy, who serves as our director of independent power project development for Ontario.

Mr Conway: Before you people begin, I presume everybody knows, and if you don't it's because he's too — Jim Dinning of course is the former Minister of Finance for Alberta, just in case people don't know. So he's not exactly a neophyte in these matters.

Mr Gilchrist: But it is somewhat novel being on the other side of the table.

Mr Conway: I wanted to be sure the full context was understood. Thank you.

The Chair: You're most welcome.

Mr Dinning: Madam Chair, the helpfulness of your members is appreciated.

The Chair: No doubt.

Mr Dinning: I did want to say, on behalf of TransAlta Corp, that we are here to express support for Bill 35 as it is appearing before the assembly today. We compliment you, Madam Chair; your colleague the Minister of Energy, Jim Wilson; and indeed all of your colleagues from all corners of the House for the progress you've

made in restructuring Ontario's electricity market. We believe that Ontarians will see the benefits of more competition in electricity. At a minimum, the investment dollars needed for a competitive market will come from companies confidently willing to invest in the province's growth — dollars from those companies, not from the taxpayers' pockets.

Today I want to talk to you about TransAlta and a project we are working on here in Sarnia. It is appropriate that your hearings would bring you to Sarnia, because we believe that the project highlights some of the key issues that need to be addressed as you deliberate on the legislation.

As most of you may well know, TransAlta is an investor-owned energy company that has been in business since 1911. We have assets of over \$5 billion, and operate in Canada, New Zealand, Australia, Argentina and the United States. We have been active in Ontario since 1988, and we currently employ over 60 people in the province. We have invested in three cogeneration plants in the province, 230 megawatts of power, and we operate those three plants in Windsor, Mississauga, as well as Ottawa.

We have experience in other markets that are going through the struggle of electricity restructuring. We own and operate significant electricity generation, transmission and distribution assets in Alberta. As a result, we have been involved in restructuring in the province there since 1996.

We are also in the New Zealand market, and that market has been under active restructuring since 1994.

We are an energy marketing player in the west, especially since we became Canada's first marketer affiliated with a utility to get a FERC licence to sell power at market-based rates in the United States.

So, to the Sarnia project. A few months ago the company was selected to develop a 520-megawatt, \$400-million cogeneration facility here in the city. We are joined at your hearing today by the companies we are working with, each having shown some pretty strong leadership in venturing forth into the new electricity world. These employers in the community, whether it's Bayer, Dow, Imperial Oil, Montell, NOVA, Shell or Sunoco, to name just a few, require low-cost, reliable power and steam for their operations. We believe those industrials, together with TransAlta, have created a model for power development in this community.

In fact, what's interesting in preparing our thoughts, we've heard from others their belief that if the Sarnia project cannot be feasible because of restrictions in either legislation or regulation, then it's going to be mighty hard for any project of this kind to get off the ground in most other parts of Ontario. With the number of industrial customers in the area, and Barry had a chance to drive me — this is my first time in Sarnia — down the strip and see all of the industrial activity in this area, both the power and the steam demands are ever so apparent.

Sarnia is a prime site for cogeneration. We believe that the benefits of lower-cost, reliable power will be passed on not just to those industrial customers but, equally

important, to the residents in the area that is served by Sarnia Hydro.

The project also fits in with the legislation's objective of more environmentally sound generation. The project uses world-proven technology to provide low-cost power and steam. In contrast to a coal-fired plant or in contrast to convention power and steam generation, we see a reduction in CO₂ emissions in the order of about 2.5 million tonnes per year.

We're investing \$2 million in development costs for the project this year, and more again in 1999. In total, we're on stream to invest about \$400 million in the project. I remind you again, they're shareholders' dollars, not backed up by the residents or the taxpayers of Ontario. In order to get final corporate approval to proceed with the investment, TransAlta is looking for resolution on four key issues early in the months ahead so the plant can come on stream in 2001.

The first thing we're looking for is the need to allow for physical bilateral contracts; second, the need to have competitive access to the transmission system; third, there needs to be equitable and defined treatment of the stranded debt; and lastly and probably of the greatest importance, there needs to be access to an open market to sell electricity in Ontario or adjoining markets.

We're quite convinced that Bill 35 ensures that fair and open access to the market, and I think that has to be the standard.

Let me address the first three quickly. First is the need for physical bilateral contracts. Price certainty is a critical issue for customers in projects such as Sarnia. We agree with the Market Design Committee when it recommends using physical bilateral contracts. These allow suppliers to contract directly with their customers on specific details, including the price for physical supply. In our view, they are one of the only ways to achieve price certainty in a deregulated environment.

I'll be careful in making these remarks, because I'm reflecting on my own home province of Alberta, but there we currently have a mandatory power pool without physical bilateral contracts. Frankly, it's not working very well at all. We have a market where customers don't know what their price is going to be because pool prices are based on market supply and demand at any given time, so prices generally are not well known or not specifically known in advance. The only way to manage the risk of that price volatility is to enter into financial agreements, but more often than not, customers and indeed suppliers are either unable or unwilling to enter into these financial agreements because they take a lot of time, they take a lot of money and they take a lot of effort to put the infrastructure in place.

The result is a less than liquid market, where contract premiums are pretty high. Customers are left to manage price risk by absorbing it themselves by buying power at fluctuating prices or paying high premiums for risk management instruments. Neither alternative is all that attractive. Allowing physical bilateral contracts in addition to the power pool that you will establish is the

best way to ensure price certainty and a more liquid market in the unregulated Ontario market of the future. I would suggest that because of the importance of bilateral contracts, we would recommend that you include explicit wording in Bill 35 to allow for those contracts.

Our second key issue involves competitive access to the transmission system. Even though the transmission and wires function will continue to be operated primarily as a monopoly service, there are ways, in our view, to enhance competitive incentives so monopoly wires providers ensure their prices remain competitive. This has happened in the natural gas distribution business, so we're not advocating something without precedent; it in fact exists in the natural gas business today. It can be done through your legislation and the regulations, which will promote precisely this type of competitive discipline in the wires business.

1410

One benefit of cogeneration, with both power and steam, is that the power source is very near to where the power is actually required. That's why Sarnia is a perfect site for cogeneration. There isn't the need for long transmission lines to bring the power from far away to the customers. There is less risk of the power going out, like you saw from the ice storms earlier this year, and there is far less power lost in transmission, which makes the system far more efficient. However, the problem is that customers, both residential and industrial, don't get the benefit if they have to pay a high rate for transmission.

Customers in Ontario should be able to pay a competitive price for their power transmission. You can do that one of two ways: either by letting those customers pay what the lower-priced alternative would cost or by allowing others to build the transmission line at the lower cost. Either way, the savings get passed along to customers. In fact, anything less means that customers will pay higher rates than are necessary. In the case of TransAlta here in the city of Sarnia, our project will not be viable without competitive transmission rates.

In Alberta, where industrial sites can span many square miles — a good example is the oil sands site in north-eastern Alberta — competitive transmission is fundamental to those large cogeneration projects. It's the same in New Zealand, where competitive transmission is a cornerstone of the restructuring process. It's being done in those places and elsewhere because it works and it keeps prices down.

Third is the subject of stranded debt. You won't be surprised when we say it is a critical issue. You've heard plenty of that at this committee in all your hearings to date. It's our view that no one should avoid paying the stranded debt charge. It's our view that it needs to be spelled out clearly in the legislation that all and sundry should pay that stranded debt charge. This ensures that all generation operates on a level playing field, that no entity gets a leg up as we enter this new era in Ontario.

The method by which the debt charge is determined is also critical. We believe that no competitive advantage should be given to Genco as a result of the stranded debt

allocation. As for Genco's capital structure, I would add that it should be comparable to its competitors in the private sector, with an appropriate amount of debt remaining on Genco's books. Again, anything else or anything less would confer an unfair leg up and consumers would not come out the winner in this process. Frankly, again I would advocate the inclusion of that notion right in the legislation, because as Mr Conway will suggest, I know all too well how regulations can produce fog over an important issue such as this.

There's one other issue that we think needs to be addressed, and that is interim controls on Ontario Hydro. We've read the Market Design Committee's second-quarter report and we support the direction they're moving in, in addressing market power by the year 2000.

In order to bring projects like Sarnia on stream in time for 2001, we must make investment decisions now. But in this interim period we are concerned over the mitigation measures that are placed on Ontario Hydro. In our view, Hydro should not be able to access taxpayer-backed capital or assets or special rates, nor should they use their unique situation as the monopoly provider and regulator now to give them an unfair advantage as the competitive market opens. We believe the Market Surveillance Panel needs to be given an oversight role immediately. We'd advocate that because you're building the rules for how the market is going to open up, and we hope that nothing would be done now that would undo prematurely the work that you're doing around this table.

We would close by saying the work you've done has been a significant factor. What has happened in this province in the last number of months has been a significant factor in TransAlta's decision to pursue the Sarnia project, in addition to others that we are considering about the province. As you can see, there are still some issues that need to be addressed, but we are confident that you are on the right track; that gives us the confidence to invest our shareholders' dollars.

I'll leave it at that. Barry Chuddy and I would be happy to answer any questions that you or your colleagues might have.

The Chair: We have just over four minutes for questions from each caucus. We'll begin with the Liberal caucus.

Mr Phillips: I appreciate the presentation and appreciate the chance to meet you. You have a very good reputation and I'm sure you bring your talents well to this organization.

I want to start on the stranded debt issue, because I have concerns on the other side of the issue. My worry is that Genco will be saddled with too much of the stranded debt. Organizations like yourself will do very well competing against them, but the public is left with a huge operation, Genco, that in my opinion may not be competitive. But I could be satisfied, if there is a way in the legislation — because right now we will not know how the stranded debt's going to be assigned until after the legislation is passed. It will all be done away from the glare of the public.

I'm attracted to your thought of including wording in the legislation that would add some certainty, because I would like that as well. Have you any suggestions for us on wording in the legislation that might satisfy all of us that we would have a much better understanding of the principles on which the stranded debt is going to be assigned?

Mr Dinning: Mr Phillips, I don't have wording in my hip pocket, but we would be happy to go home and think about that and provide it through the Chair to you and come back to you.

Our position, and I hope you heard it in my remarks, is we don't believe that anybody should have a leg up; that putting the stake in the ground as to how much the stranded debt is and how much stays with Genco perhaps becomes almost a policy issue within government and within the Legislature, as to how much you actually want Genco to truly be able to compete with others who are going to come into the business. You know better than I do the fine balance that is going to have to be struck in putting that stake in the ground.

Mr Phillips: I agree. I would appreciate any wording.

Mr Dinning: We'll happily provide it.

Mr Phillips: The government has decided that the big thing that could reduce the stranded debt is the selling off of some of the Genco assets. That's not in the cards. There will be a huge number, between \$15 billion and \$30 billion, I gather, so I would appreciate any advice on that.

Mr Dinning: You're all looking for reduced, or at least capped but better still reduced, prices. Don't give it such a leg up that the competitors who come in to try and do that are hobbled by, may I say, a Godzilla that has an unfair advantage.

Mr Conway: Thank you very much, Jim. On the other point about competitive access to transmission, you make a very strong argument, but I hear you saying on page 4 that for projects like the TransAlta project to work in Sarnia you're going to need a couple of things. You're going to need fixed bilateral contracts, which the Market Design Committee does say it's certainly favourably disposed to, but you've also got to get access to the transmission system. You use the phrase "competitive access," but some people might say it might even be preferential access. How is it not preferential access?

Mr Dinning: Let me try to start it and then I'm going to ask Barry to finish it off. You're pretty unique. When you look at Sarnia — I said to Barry I had an opportunity to meet with the mayor this morning.

Mr Conway: We all like the project. I like it as well.

Mr Dinning: Sean, there is not a strip of industrial and commercial activity anything like Sarnia, I don't think, anywhere in this country. You've got such a confined area with such a concentration that requires not just power, because most generation isn't with steam, it's just power. You've got power and steam. Just as in natural gas where there is concentration of demand and requirements in other areas of the province, there is a competitive rate.

We can do one of two things: negotiate, such that Servco still gets its fair whack of dough for the services

that it provides, or we can show you — I think Barry will be able to show you, ultimately — here's how much it would cost us to build a competitive transmission line beside the one that's there now. Well, that doesn't make any sense, but that could be and should be the benchmark. I ask Barry to complement the answer.

1420

Mr Barry Chuddy: What we're proposing is really a surrogate for competition in the wires business, where we concur that the wires of transmission is really a monopoly function but the need to impose some competitive forces on that seems to be a good way to ensure that the efficiencies in that part of the business remain even though the monopoly must stay.

What we're talking about is not preferential. As Jim mentioned, we're proposing a mechanism where that has been prescribed and there are precedents set in the gas business where the uniqueness of a situation is identified and recognized and, on the basis of that uniqueness, we would have the obligation, likely through the Ontario Energy Board, to demonstrate why what we're proposing will make sense. Today our interest is in ensuring that the mechanism is there that allows us to make the case for something that allows lower cost power to be generated by this large facility, which becomes an aggregator of steam and power.

Mr Conway: I appreciate that. One of the concerns we've got is making sure that there is equity and that people aren't, for a variety of good and special cases, hopping the fence away from some general obligation.

On the stranded debt, the policy prescribes a menu of instruments by which the debt can be written down. Thinking about it from TransAlta's point of view, you make a very strong argument in your brief that it should be a non-bypassable stranded debt charge, in whatever form. Beyond that, have you got any advice to the committee, thinking about TransAlta's situation, as to which of the instruments would be the most attractive or the fairest?

Mr Chuddy: What's currently on the table is fundamentally two mechanisms where that could be collected either at the generator level or at the consumer level. We believe that, subject to the Market Design Committee getting all the details sorted out, either of those, and in some combination, depending on the circumstances, makes an awful lot of sense. Our view is that imposing that collection on the transmission system is probably not the right way to do it, but that the right way is either at the generation or consumer level.

As we look at competing in the province and we look at those that we'll be competing against, certainly imports from other provinces and from south of the border are something that we need to be sensitive to as we configure our plans. The way it's prescribed, to allow a mechanism to capture that charge at the consumer level helps address that type of concern where you're dealing with imports and, on the generation level, captures both sides of the equation, and I think what's left in the middle is the transmission. So that would be our current perspective on that.

Mr Conway: A very artful answer.

Mr Dinning: He's running next year.

Mr Lessard: Thank you very much for your presentation. We've seen the benefits of cogeneration in the Windsor area. TransAlta I think was one of the first projects that got underway there. It's unfortunate that the government didn't pursue that as a policy option 20 or 25 years ago. We may not have ended up with the stranded debt problem that we have at the present time.

One of the questions I had was the one that Mr Conway just asked and it was about who should pay the stranded debt. One of the things you said is that no one avoids paying, and that's an important principle. Another one to me is that no one avoids paying their fair share. We don't want one group of consumers to be paying a higher share, especially residential consumers. You've answered the question about how that can be allocated but that the determination of what that amount actually is is critical as well.

I wonder whether you feel as though there should be some further opportunity to have input into determining the stranded debt, either before the Ontario Energy Board or through some other method. The way it stands now, it's the Minister of Finance who is going to make that call. Ultimately it will be a political decision. I think it should be transparent and should have some input by all the stakeholders.

Mr Dinning: Mr Lessard, we would certainly advocate the principle of transparency so that all the facts are on the table. Again, it comes down to a judgement call, indeed, on the part of the Minister of Finance. I can say from some experience that that will be a tough one to call, because it isn't just Ontario Hydro that you're talking about. You're talking about, ultimately, the books and the overarching debt for which Her Majesty's government is on the hook in the province. It does come down to a policy issue, and it also relates to how competitive Ontario Hydro ultimately is going to be allowed to be. But we would certainly advocate the notion of transparency. I suppose we're not likely to be the characters at the head of the line demanding a review if it's too high, because I'm sure there would be others of your constituents who would be well ahead of us.

Mr Lessard: I understand your position with respect to who should pay and what it should be.

Mr Dinning: We try to be in the energy business rather than the giving advice to the Minister of Finance business anymore.

Mr Lessard: One of the things you mentioned are these physical bilateral contracts. I'm not sure I understand completely that concept. I wonder if you can elaborate a bit further for me.

Mr Dinning: May I just use the example — I'm responsible for a trading floor where there is a spot market price, minute by minute, hour by hour. Those who agree to go in and not use a regulated rate can buy their product at the spot market price. But I can't tell you what it's going to be next year. I can't even tell you what it's going to be

10 minutes from now for sure, but I certainly can't tell you what it's going to be a year from now.

Once we no longer have those regulated rates, if you and I want to buy power from Barrie, we'd like to know, for the economics of our project, how much that's going to be. Well, in a bilateral contract, you and I can settle out all the details of that contract: when it's going to be delivered, how much it's going to be, how many megawatts, and at what price. In a pool mechanism, because you're just buying at the pool price, whatever it is, you can't budget for sure, for sure. Whereas you and I, if we wanted, could nail that and contain that cost and put it in our budget.

Mr Lessard: I know you said "you and I," but as a residential consumer, I don't think I'm going to be jumping into that market.

Mr Dinning: Sarnia Hydro can. Sarnia Hydro can nail down its price.

Mr Lessard: One of the things that has been suggested to us is an electricity futures market. Is it similar to that, or is that an option that you think is worth considering as well?

Mr Dinning: What the futures market does is help to nail down, find and determine a price.

Mr Chuddy: You really impose somebody else to find a way to quantify, mitigate and get comfortable with the risk of that future price. The experience that I've had in working with industrials, that tend to be pretty shrewd negotiators and also very capable businessmen, is that they tend to get pretty suspicious of the kind of premiums you're building in to provide that kind of assurance for them against the financial market. I think there's a greater degree of comfort in being able to negotiate an arrangement that defines the price of power, for a long term that's not conditional or contingent on some derivative arrangement.

There's another point that I think is important. When we talk about a cogeneration project, this is a project that does not simply produce electric power. It produces electric power and steam. The way it produces steam is by generating electricity. When you give an entity the option of then fulfilling their power obligations through futures markets and other mechanisms, you tend to move away from the certainty that it'll be that generator running that produces the power, and therefore that generator that has the capability of producing steam. One of the key components of what we're doing in Sarnia is being able to demonstrate to the people we're working with that the reliability of steam production will not suffer for a cost benefit. One way to do that is to have a physical bilateral contract for power that obliges us to run generation to fulfill our obligations to produce steam. So it's several issues together. I don't think one by itself would make the argument, but I think collectively they make a compelling argument.

Mr Gilchrist: Thank you both for your presentation. I guess if we're setting out the full context, Mr Conway, we'd also have to admit that 25 years ago, Jim Dinning and I would hardly have imagined today would be in our

future, where he was part of generating electricity and I'm part of regulating it. We were busy, as fellow Queen's commerce students, just worrying about paying that month's hydro bill, as paltry a bill as it would have been back then.

Mr Conway: The mind boggles.

Mr Gilchrist: Indeed.

I'd like to explore a little further a couple of your suggestions. I do that very much in the context of offering to you our appreciation. As a company with experience in virtually every significant jurisdiction that has gone through what Ontario's proposing to go through now, you have a wealth of experience that you bring to the table. I guess that fills me with even greater comfort and resolve that the bill is pointing us in the right direction, given your willingness to consider not just this but other investments in Ontario if in fact the market is opened up.

1430

You opened by talking about the need for physical bilateral contracts. It would be both impudent and imprudent for anyone other than the minister to make a 100% commitment, but let me offer you this: We are absolutely committed to the most liquid market possible. We appreciate — and you've pointed out here again, at some risk — that Alberta has not worked well by having far too restrictive a pool. Without saying categorically that it's in the cards, I hope I can give you the comfort that the mechanisms will be in place to ensure that we don't follow Alberta's example.

The other point — and it's a very important one, and we've had it approached myriad ways in different presentations — is of course the stranded debt. As a company that will have to go out to the marketplace to get shareholders to put their money on the table, to put their money where their mouth is, on any investment that you propose to make, you offer a comment in here about Genco's capital structure that I think is quite appropriate: "It should be comparable to its competitors in the private sector, with an appropriate amount of debt remaining on its books."

Would you agree with me that that's not really all that difficult an equation to come out with? If one were to first select a category — do you want it to be A, A-, B, depending on what price you're prepared to pay for your borrowings — it flows from that, the ratio of debt that could be supported? Are you comfortable, given the feedback we'll get from people like yourselves and of course the work done by the Ministry of Finance, that there is a number that will fairly allocate to Genco, if in fact that's the means of doing it, if you simply went and used the market test? It won't be perfect, but will it be at least appropriate, speaking as a former treasurer?

Mr Conway: And thinking about bags full of nuclear assets.

Mr Lessard: He wants a political response.

Mr Dinning: Does he?

Mr Gilchrist: No, a business response. I don't believe anyone at this table has suggested, but certainly others have, that somehow it's a number that's just going to be

picked out of the air. I've never believed that or I couldn't support an awful lot of what's in this bill. I think there is a mathematical calculation that will be derived from the appraisal of the assets, and that, in turn, is a function of the income they derive. What comfort, politically or from a business perspective, could you give to the taxpayers in Ontario that at the end of the day — we could all quibble \$100 million one way or the other — basically there is a mechanism to determine the appropriate level of debt?

Mr Dinning: We've had an opportunity, as others have, to put our views forward on it and ask questions as to the process that the ministry is going through. We're confident in the people who are making the difficult calculations, and then we're confident in the government and the Minister of Finance to make that call. It's not purely a financial one, but we know that in the best interests of the objectives of this bill a fine balance must be struck, and we're confident that Mr Eves will strike it.

Mr Gilchrist: Would it be fair to say, then, that your problem with stranded debt is not so much how it's calculated but the timing, that for you to proceed you need to know that number in the next few months, certainly before the end of the year?

Mr Chuddy: I think it's timing. I think it's certainty as well. The timing is critical in the context of ensuring that we can meet our commitments to the customers we're working with to bring a project on stream that provides the benefits we've suggested. Certainty, in the context of, as my colleague has mentioned, investing \$400 million of the shareholders' money is not something that gains a lot of forgiveness if we've made a mistake. Therefore, we want to be certain that we're entering down a road with clarity and understanding of what the competitive forces will be that we're going to be working in. We need to know that before we commit the funds necessary to build the project.

Mr Dinning: You want companies like TransAlta, and lots of them, to be making more and more of these investments. We're confident that the Minister of Finance knows exactly that, so that's the balance he's got to strike so he doesn't make a decision that's going to say to a bunch of potential investors, "Stay away." He wants to make it so that a bunch of them come and put their money down.

As to your comment about experience at the outset of your comments, I'd remind you of my favourite cowboy poet, who says that experience is what you get when you don't get what you want.

Mr Gilchrist: Good luck in your current career.

The Chair: We have had the pleasure of a number of experienced people coming before our committee with their best advice. We are listening very closely and are grateful to you and the other presenters for taking the time to share that with us. Thank you very much.

Mrs Johns: Madam Chair, maybe he'd like to comment on whether Mr Gilchrist got a degree, frankly.

Mr Dinning: I can assure you, Madam Chair, that Mr Gilchrist and I both got our degrees.

The Chair: That's good to know. We were quite concerned.

SARNIA REGIONAL COGENERATION PROJECT

The Chair: Now calling representatives from the Sarnia regional cogeneration project, please. Good afternoon, gentlemen. Thank you very much for coming before the committee.

Mr Mike Ireland: Good afternoon, Madam Chair and members of the committee. My name is Mike Ireland. I'm employed as the senior business development officer with the Sarnia-Lambton office of economic development. I'm joined today by Mr Ken Ball, vice-president of refining for Sunoco, and by Martin Bruce, leader of planning and growth with Nova Chemicals (Canada) Ltd. We are here today to discuss the requirements of Bill 35 and subsequent regulations which will facilitate the establishment of a major economic development initiative in our community, the Sarnia regional cogeneration project.

In my comments, I'd like to provide some insight into the anticipated benefits arising to our community from Bill 35, along with an overview of the regional cogeneration project. Mr Ball will then discuss the concerns of our major industries in this initiative which Bill 35 must address to ensure that the project comes to fruition.

For your information, the Sarnia-Lambton office of economic development is the main economic development body for Sarnia and Lambton county. We work quite closely with other representatives from private and public sector organizations to increase the attractiveness of our region as a place for investment. Our efforts focus on the attraction of new industry, the growth and retention of existing industry, and improving the competitiveness of local infrastructure.

Bill 35 and Sarnia-Lambton: The office of economic development is very supportive of the goals and objectives of Bill 35. The introduction of competition into Ontario's electricity market will lower energy costs and improve the attractiveness of the provincial investment climate, creating new jobs and economic growth.

Sarnia's petrochemical industry will benefit substantially from Bill 35. The magnitude of this benefit was identified in 1997 by the Canadian Chemical Producers' Association, which forecast that Ontario, and specifically the Sarnia area, had the potential to attract over \$2 billion in chemical investment over a three- to five-year period through the elimination of certain investment barriers, a key one being high electricity costs. Bill 35 will enhance the long-term viability of Sarnia-Lambton as a chemical centre.

Now I'd like to give you a little bit of background on how this project came into being and where the next steps are for us. In 1996, an economic development blueprint for our community was released, which we're now in the process of implementing. This document, *The First Step: A Strategy for Economic Renewal in Lambton County*, identified seven objectives for revitalizing our local economy. Two of these objectives identified the need to improve the competitiveness of the existing infrastructure, along with the need to diversify the local economic base.

In meeting these objectives, the challenge for us has been to develop a unique competitive advantage. The energy sector, and specifically opportunities in the area of cogeneration, was identified as having potential for creation of this advantage.

1440

This potential, together with the release of the white paper this past November and its encouragement of private sector generation projects where they make economic sense, provided the impetus for our community to pursue the development of a Sarnia regional cogeneration facility. This January, a committee comprised of the major power consuming industries, Sarnia Hydro and my organization was formally established. By late May, TransAlta Energy Corp was selected as the developer for the project. Since then, all parties have been working very diligently to develop the project.

The legislation this committee is now studying, Bill 35, provides the legislative framework to realize the creation of the Sarnia regional cogeneration project.

We have two primary objectives with the project, and that is to create the Sarnia-Lambton energy advantage in two areas. First, the project will provide a long-term source of reliable, low-cost electrical power and steam for our local industries, thus enhancing their ability to compete and eliminating a critical investment barrier. The second thrust of the advantage is the availability of competitively priced electricity for merchant sale, expansions and new industry to the area.

The Sarnia regional cogeneration project is a major economic development initiative for both Sarnia-Lambton and Ontario. Bill 35 is the beginning point, but there is a lot yet to do by way of supporting regulation to bring this project to fruition. TransAlta has already spoken to some of their concerns as developers in making this project a reality. Sarnia's major industries also have specific concerns, which Ken Ball will now address.

Mr Ken Ball: Thank you, Mike. Good afternoon, Madam Chair and members of the committee. As Mike has indicated, I am the vice-president of refining for Sunoco, but today I am speaking to you as a representative of the interested parties in the Sarnia project. At the present time there are seven companies involved in the project that have indicated interest, and we are working with the project developer, TransAlta, to develop this sizeable thermal-steam and electric-power project.

I am joined today by Mr Martin Bruce from Nova Chemicals, who will also assist me with any questions. As well, seated in the audience we have representatives from all the interested parties, namely, Bayer, Dow Chemical, Imperial Oil, Montell, Shell Canada and myself from Sunoco. Collectively, in the Sarnia area these seven industries account for approximately 350 megawatts of electricity demand. They also account for an industrial steam demand or requirement exceeding 1.5 million pounds per hour and a current employee base in the Sarnia area exceeding 5,600. We are brought together by one common objective, namely, the search for a reliable source of low-cost power and low-cost steam that will

allow us to compete efficiently in the global marketplace. The legislative proposal which you are considering should enable these companies to benefit and be competitive from the development of this project.

Bill 35 and the related work being undertaken by the Market Design Committee and other committees goes a long way to laying the foundation for competition in the electric power industry in Ontario. By doing so, it offers both industrial and retail customers the opportunity to have efficiently produced electricity at highly competitive prices. We strongly support the overall intent of Bill 35 and recommend its adoption at the earliest possible date.

The Sarnia project is a tangible example of the type of opportunity that will emanate from the restructuring of the Ontario industry. However, the success of this restructuring will depend heavily on the underlying regulatory details that support the legislation. In this regard, for projects such as the Sarnia project to proceed, it is absolutely paramount, from the perspective of large industrial users, that three critical concerns be appropriately addressed. Specifically, the three concerns are (1) the ability to enter into physical bilateral supply arrangements, (2) the ability to negotiate transmission optimization rates or equivalents, and (3) the implementation of a fair and equitable stranded debt regime that will not place Canadian industry at a global cost disadvantage. Let me address each of these individually.

The need for physical bilateral arrangements: This project will supply critical quantities of both electricity and steam for the Sarnia area. Steam is a direct by-product of the cogeneration process and is required on a continuous basis by each of the industry members. If no electricity is produced at the plant, then there is no steam either. It is critical that the physical bilateral contracts be in place to ensure that physical production of electricity occurs at the Sarnia project facility so that steam can flow to industry participants on a continuous and reliable basis. This is similar to the gas industry, which has had the ability in Ontario since deregulation of this market to have physical contracts, which have worked well, where required. Similarly, the MDC has recognized this need and has recommended it in their second interim report, released in June. This Ontario-based project will not proceed if steam availability cannot be assured and enabled by physical bilateral contracts.

The second area of concern, and equally fundamental to this project proceeding, is the ability to negotiate a transmission optimization rate or, alternately, to have the capability of constructing one's own transmission facilities and operating them independently. The concept of a transmission optimization rate will induce a general competitive market discipline to the transmission monopoly and provide competitive options for producers. In the case of the Sarnia project, it is fundamental to have a transmission rate that is representative of the true cost of distributing power in Sarnia from these distributed power generation facilities to the industry members. Otherwise, the project is not economically efficient.

The third area deals with stranded debt or the debt charge. We feel that the stranded debt or the debt charge placed upon the system must be fair not only in a ringed-fence Ontario context but also on an international and global basis. The benefits of competition in terms of lower electrical costs must not be clawed back in the form of higher stranded-asset charges. Sarnia-area industry sells its products on world markets, competing against the likes of Gulf Coast producers who have significant cost advantages in their production of electricity due to low-priced natural gas and massive economies of scale. In addition, we recommend that any stranded charge should be highly visible to consumers and be removed as soon as repayment of the stranded charges occurs.

The overall Sarnia project supports the goals of Bill 35. It is highly efficient as a result of the large thermal steam load, allowing for optimum design efficiency from an energy standpoint. Very few other locations in the province combine such high demands for steam and electricity in one location. This project also results in improved greenhouse gas emissions. Clean-burning natural gas will be utilized to back out a variety of fossil fuels that are currently used for production of the area's power requirements.

This project is clearly financially viable, provided that appropriate competitive regulatory regimes are instituted. The combination of a financially strong developer, large industrial customers and substantive economies of scale in the project design result in a robust project on a global scene for the long term.

1450

In addition, the Sarnia project provides a significant source of competitive merchant power available for the Sarnia-area customers, as well as for input into the Ontario grid. Approximately 25% of the 520-megawatt design capacity will be available for the merchant power sector, with power production costs significantly lowered as a result of the tie with the large industrial baseload and the attractive cogeneration economics.

In summary, on behalf of the Sarnia industry, the Energy Competition Act lays the framework for competition. For the Sarnia project to proceed, the industry participants require this legislation, along with subsequent regulations, to address appropriately the three concerns, namely, the physical bilateral supply arrangement options, the ability to negotiate competitive transmission optimization rates and the incorporation of a visible and equitable stranded debt-asset regime.

The Sarnia project will add between 2% to 3% to the generation capacity of Ontario in a highly competitive fashion. We strongly encourage the government to retain the aggressive time schedule established by the minister and urge you to ensure that the resulting regulatory regime provides clarity and certainty for the industry, who themselves will be making long-term commitments to new power alternatives in the province.

Thank you for the opportunity to provide input on this very important legislative initiative.

The Chair: We have four minutes per caucus for questioning. We begin with the NDP caucus.

Mr Lessard: Thank you very much for your presentation. Do you support a competition transition charge on all generators of electricity in Ontario?

Mr Martin Bruce: There is an issue that some of the generators have been long-time generators and self-sufficient. The group hasn't really discussed that as an area group, and you might get some different opinions.

Mr Lessard: So there's a possibility that you might agree that there should be some exceptions, I guess.

Mr Bruce: Some factions believe that's the case, yes. The group is being very careful, trying to work on a project of this nature, about what things we discuss as a group and what we don't, trying to work with a single developer. We haven't really talked about that issue, so speaking as the group, we can't give you an answer.

Mr Lessard: I guess if it's not on generators, it goes on consumers, or it's possible that it may not go on anybody. But that's one of the choices the government is going to be faced with, whether it goes on generators or whether it goes on consumers. Right now the legislation doesn't say anything with respect to whether it covers generators from outside Ontario. That's another area that needs to be looked at as well.

In your submission you said that the payments for the stranded debt need to be visible, and that's for consumers. I'm wondering whether you support a competition transition charge on consumers rather than generators. Would that be your favourite option?

Mr Bruce: It's an option that provides fairness and it deals with the import of power from outside the province.

The Chair: To Mr Boushy.

Mr Dave Boushy (Sarnia): First of all, I just want to say that I'm sorry I haven't been able to attend the meetings all day. I had a busy day. I wanted to welcome you to Sarnia and I hope you have had a good day. We have a tremendously good community. Come back and see us again.

I visited the Gulf Coast a couple of years ago and I saw how industries are booming there. One of the reasons is the low cost of electricity. Do you believe that the bill we have now would allow you, our industries in this area, to bring their energy costs in line with those in the Gulf Coast?

Mr Ball: Yes. Each of the companies has done their own individual economic analysis with regard to where the industry is going in North America from the sense of power costs and also the options with regard to imports long-term, where the North American pricing is going and where the US pricing is going. We're convinced, in the scenarios each of us has looked at, that this particular project, the Sarnia project, has the economics whereby the cost of energy and steam to the industries here is equally competitive with what can be created elsewhere within the US and Canada. It is a very viable project economically. The power costs we're looking at are in line with the power costs in other deregulated areas that have already occurred and also in line with forecasts available out there

with regard to where power costs will go in North America as the industry deregulates. We feel this is a very solid project, with the right enabling legislation that would make it competitive against elsewhere on a global market scale.

Mrs Johns: I have a question relating to the retail customer. We've heard all along that this is going to be good for the industrial customer, but I see in this project that you have made some power available to your retail customers also. Can you talk about how much of this power will be going to the retail customer and what kind of breaks they may get? I was wondering if you could specifically outline for me the price per kilowatt hour that the line charts — when you get to the line, how much that would cost to generate this power.

Mr Ball: The chaps you had earlier were better for this. Basically, the answer is that the industry itself is set up as industrial customers. TransAlta has designed a plant that has additional capacity available to the grid and can be sold into a merchant power regime. If you put in place a concept of physical bilaterals, then what we'd see or what TransAlta would see is basically being able to sell that additional energy on a physical bilateral arrangement to a muni or elsewhere. That again would be a separate contract, a separate undertaking with that customer. We ourselves, as industry, have not looked at the residential retail side of the market as far as price goes.

As far as the pricing for each of the individual members of the industry is concerned, again that's been taken as an organization-by-organization discussion between the developer and each of the member companies. Call it a public posted rate that's being established. Each of us has different power and steam demand mixes, and that influences the way in which you would establish a net price. Several of us currently have our own steam generation or our own power generation facilities and that has to go into the equation.

So it's not possible to give the committee a number that the industry will see. Each of the industry members, though, have evaluated their respective economics versus options they may have if they did something on their own or went elsewhere and are still individually satisfied that the project is a viable project for them and is their best competitive choice long-term. It makes a significant difference in the overall competitiveness of each of the members as we go forward.

1500

Mr Phillips: One of the challenges for us is to try and have an eye out for the taxpayer here who is going to be left with the remnants of Ontario Hydro. Your project is just the first of many across the province. Ontario Hydro must shiver a little bit because they'll be losing, I would think, some of their most profitable customers, first here, and the jewels will be picked off around the province one by one. Of your three concerns, at least two of them — the government today indicated the physical bilateral supply arrangements will not be a problem and I think there was some reassurance on the transmission side.

My question really is, can you give us any help in our role of trying to make sure that when the smoke all clears and all of the good customers have left Hydro, and Hydro still has retained 100% of its existing generating plants — they're getting rid of none of them. Has your organization any advice for how Ontario Hydro is going to survive under those circumstances, and whether the decision to allow Ontario Hydro to retain 100% of its generating plants is the right policy one?

Mr Ball: In all honesty, we haven't discussed that particular perspective as a group to this point in time, because we haven't had that perspective. The perspective we've had is just basically the fairness and the visibility of any stranded asset charge that is established, and then a concern with regard to how large it is based upon the term that is selected for repayment. From the perspective of answering the question, I would say that we haven't had any dialogue as a group against that perspective.

Mr Phillips: What is your expectation of the percentage saving your members may see on their equivalent bills?

Mr Ball: It's a relative range. Each of them is different. Each of the organizations is starting from a different place. If you are basically working in a range of 15% to 20%, or 15% to 25%, I think that is the range of possibility.

Mr Bruce: Can I make a comment on your previous question?

Mr Phillips: Sure.

Mr Bruce: Again, it's not as a group, but our company objected to Hydro's application to export power under FERC because of the very restrictive rules and that it was not really a free marketplace. I think the solution to your issue is that the more projects like these that come along that will free up capacity and allow Hydro to pass FERC rules and export to the fairly lucrative —

Mr Phillips: I'd sure like to see evidence that we can do that.

Mr Bruce: Unless projects like this come along, and unless the rules are changed from the current Ontario Hydro system, I think you will continually be denied; and companies like us will continue to object because we're part of the existing power joint venture and couldn't get our own newly acquired plant rolled into that agreement because of Ontario Hydro's resistance to that. I think the solution is a broader market. Minister Wilson was talking at lunch about the prospect for Hydro serving 50% of the northeast needs over the next five years. I think there is huge potential.

Mr Conway: I think your project is a very attractive one. I've been one who has been saying throughout the piece that my primary concern is for the broad base of residential and farm customers, but it has to be said as well that there is a major industrial component in this province on which we all depend and it has to be recognized. I think the cogeneration possibilities — and as my colleague Mr Phillips said, and I think you've said it as well, if there ever was a place for this to work, it should be here. That is something that we want to support.

The concern I have is that I see a very attractive localized set of circumstances here. I can imagine a number of others around the province and I certainly hope they materialize. It's in that next few years that we have to manage a very substantial debt, and most of the debt attaches to this nuclear division. The difficulty with this whole equation is this market. How does a market treat Ontario Hydro Nuclear? Who is really going to want it? At what price?

Yesterday in Ottawa we were told by the federal regulator some rather interesting observations about what they would expect. A market test is going to be downstream costs for decommissioning and waste management. Those costs are going to be substantial. They are real. They are going to have to be met. How do we factor that into a marketplace?

Similarly, the geography of Ontario: If we don't end up with the entire economic activity of this province at or below Highway 7, I wonder and I say quite seriously — I asked the TransAlta people a question around competitive versus preferential rates and I think I understand exactly what they need to get here to make it work. I understand that and I don't want to injure that possibility. On the other hand, I'm very anxious that a lot of folks out in lower-density parts of the world in this province not get stranded by just their geographic disadvantage and that the economic imperatives of the marketplace really start to militate in favour of Niagara Falls and Sarnia and Toronto and London. God help you if you live in Moose Pasture, Ontario.

It's more an observation than a question, obviously.

The Chair: I think that's exactly what they're thinking, Mr Conway, and they don't want to go near it. Gentlemen, thank you very much for coming before the committee with your advice, which we appreciate, and we will consider your comments.

ELECTRIC UTILITY RESTRUCTURING COMMITTEE

The Chair: Now calling representatives from the Electric Utility Restructuring Committee, please. Good afternoon and welcome. After the large presentations of several people that we've had, you're very brave coming all by yourself now.

Ms Nancy Hutton: I am all by myself, you're right.

Mrs Johns: That's because she's from London.

The Chair: We're anxious to hear what you have to say. Please introduce yourself for the Hansard record and begin.

Mr Conway: Adam Beck came from London, remember that.

The Chair: Don't let that scare you.

Ms Hutton: My name is Nancy Hutton and I'm the sales and marketing manager for London Hydro. Today I'm here representing a group of utilities that are commonly known as the Electric Utility Restructuring Committee. Our members consist of a number of utilities, namely, St Thomas PUC, Ingersoll PUC, Woodstock

PUC, North Bay Hydro, Tillsonburg PUC, Strathroy PUC, Stratford PUC, Sarnia Hydro and London Hydro. This committee of utilities has been reviewing Bill 35 since it was introduced in June of this year.

I am happy to advise you that our Electric Utility Restructuring Committee is pleased with the legislation and feels that its objectives of job creation and the protection of consumers by the provision of low-cost energy through competition are supported by all of our members.

I realize that today you have had a long day and have heard a lot of presentations so I will get right to the point of my presentation. We feel that although the legislation is good, we have a few suggestions that will make Bill 35 even better. The three main points that I wish to discuss today are the need for a level playing field, market power in generation and operational concerns.

Each of the points that I have mentioned has several subpoints. However, in light of time and fairness to those presenters who are to follow, I will leave you with the written presentation today that will address the other information and I will just touch on one of the issues in each of these areas.

1510

Under level playing field, we feel that the retail affiliates of distribution companies owned by the MEUs should have the same flexibility to operate in the market as their competitors. Bill 35 restricts the business of municipally owned distribution affiliates to electricity-related activities. Other retailers may respond to customer demands by providing any services that customers require. Municipal distribution affiliates must be able to meet the demands of their customers and should not be required to obtain regulatory clearance to do so.

Moving into a competitive environment, our goal is to set up retail affiliates that are market-driven organizations, and in order to do that, it doesn't seem fair that we would have to go before the board and reveal our strategic plans as to business opportunities we want to undertake. I realize that some of the reasoning behind that may be due to the risk to the end consumer because they're municipally owned, but we feel that right now the commission, and soon to be the board of directors that would govern these companies, should be ultimately responsible for due diligence that would be required to be performed before embarking on any new business adventure. What we're asking is that in order to ensure there is a level playing field, the restrictions that are addressed in Bill 35 be removed.

Under market power in generation, Genco's market share in Ontario generation makes it crucial that alternative sources of electricity be available from outside Ontario. Bill 35 allows the board to effectively prevent the importation of electricity based upon whether the foreign jurisdictions allow access of Ontario-based electricity. Ontario purchasers should not have their opportunity to import electricity adversely affected through the energy board's licensing authority.

Everyone's goal here is to ensure that there are better prices for all end consumers, and we feel that the only way that can happen is to ensure there is competition and that it is indeed true competition and that we allow foreign generation into Ontario's market.

The third issue is an operational concern, dealing with the default supply option. The unpaid rates under the default supply option should continue to be subject to statutory collection remedies under the Public Utilities Act. The default supply option is effectively a public utility service which distributors must provide. The cost of providing that service will be averaged across customers and should not be increased by increasing the cost of collecting unpaid rates. Bill 35 increases the collection costs for unpaid rates by removing the statutory collection remedies under the Public Utilities Act.

We agree that on the competitive side it should be removed on the affiliates and that it be fair competition. But on the distributors' side, if we're required to look after the default supply customers, then we should be able to use the same methods of collecting unpaid debts from those customers.

In summary, I would like to assure the members of this committee that you have introduced good legislation and that we are anxious to see the legislation passed. Contrary to some of the opinions out there, most municipal utilities are very anxious to welcome competition in the electric market and are looking forward to the challenges.

We hope that the issues we brought forward are helpful and that we've expressed the concerns of our group of utilities. We feel that it's an important legislative initiative and we are grateful to have had the opportunity for some input.

The Chair: Thank you very much. We have eight minutes for questions from each caucus. We'll begin with the government caucus.

Mrs Johns: I'd like to explore some of the issues you've brought forward that we haven't really heard about before. You talked about the municipal electric utility being the default supplier and that you feel that your protections under the act do not protect you from bad clients or someone not paying their bill, I assume. What is it that you would like to see in there, a shorter period of time or a lien on the property? What is it that you really want to have that you could deal with?

Ms Hutton: The lien on the property is exactly what we're looking for. That's the avenue we take now in order to collect on outstanding debts. We would like to continue to be able to do that on the distribution side.

Mrs Johns: I don't know if you can answer this question, but from London Hydro's perspective — how many customers do you have?

Ms Hutton: There are 130,000.

Mrs Johns: There are 130,000 households?

Ms Hutton: Yes.

Mrs Johns: How many liens on property would you put on in a year?

Ms Hutton: Our bad debt expense is probably in the neighbourhood of \$800,000, and I would say that 30% to 40% of that would be tax rolls.

Mrs Johns: Regarding the alliance that you mentioned at the beginning of your presentation, you're starting to talk with a large number of people. I missed all of the groups, but it seemed to be southwestern Ontario, missing of course my great home community of Huron county. Can you tell me, does Bill 35 allow you the opportunity to be able to amalgamate and to do the things that you want to do in your united presence?

Ms Hutton: It does, although the boundaries don't make it possible to amalgamate within the group that we're working with. As far as rationalization of the municipal utilities is concerned, I would suggest that probably the most appropriate approach would be to follow the new boundaries of the school boards.

Mrs Johns: I'm sorry, are you saying that there's a boundary that should be the same for all issues? I guess I'm confused. What do you mean by that?

Ms Hutton: There's been a lot of talk about a reduction in the number of municipal utilities within Ontario, and we know that the legislation certainly encourages amalgamation. What I'm saying is that we probably need a kick-start, that it's not going to happen on its own. We need some kind of guidelines as to where the amalgamations should happen.

Mrs Johns: Are you looking for the government to tell you where those lines should be? Is that what you're suggesting to me today?

Ms Hutton: Yes, I am.

Mrs Johns: Isn't that interesting.

My last question is with respect to the market share in Genco. You suggested that we really need to bring power in from the US. Of course, being in the electricity industry already, you would know that we have very limited capacity to bring it in. I think our lines only allow us to bring in 15% to 18% of the power that's required in Ontario through that process, and we're pretty much doing that right now. On any given day we're pretty much up to our maximum, especially for this hot summer we've had. There's not very much more capacity to explore on that side. We believe we have to introduce competition within the province, and that's why you heard TransAlta, Great Lakes Power and Northland Power speak about the opportunities within the province. Do you believe there's some way we could bring more power in from the States or from Quebec or Manitoba than we are at present, or does London Hydro believe that?

Ms Hutton: I think the group of utilities believes that. With my technical background, I wouldn't be able to answer as to how they would do it, whether it's increasing the interconnects or whatever. But if Ontario Hydro has a majority of the market power, market share, it's not very likely that we're going to get true competition in the first few years, and that's truly what we're looking for.

Mrs Johns: I can't remember the number, and maybe Mr Conway or Mr Galt will help me, but I remember in the select committee the dollar value they talked about for

stringing a mile of wire was something that I don't think the layperson can imagine, the costs were so prohibitive. I don't know if someone could do that more reasonably, but it certainly was very expensive. We've always moved with the thought process that we're going to have to generate most of our power from inside this island we call Ontario.

Mr Conway: Thank you very much, Ms Hutton. I almost want to say Deborah, but it's Nancy.

Mrs Johns: You get smoother by the moment.

Mr Conway: You are involved with London Hydro and you're in the sales and marketing office, so I take it you're sort of out there talking to customers and looking at market activity, front line, right?

Ms Hutton: That's correct, yes.

Mr Conway: I'm very interested to know what you're seeing and hearing and experiencing from Ontario Hydro retail these days on the ground in the London area of southwestern Ontario.

1520

Ms Hutton: From the customers?

Mr Conway: No. What's Servco up to in the marketplace these days? Anything unusual?

Laughter.

Mr Conway: It's a very serious question. You're in the market and I keep hearing some very interesting things. In fact, I meant — well, answer that question first. How long have you been at London Hydro?

Ms Hutton: I've been there 12 years.

Mr Conway: So you've got some good experience. With that experience in mind, is Servco, the Ontario Hydro retailer, more or less active and/or aggressive than —

Ms Hutton: They're very aggressive right now.

Mr Conway: More aggressive these days than, say, two or three years ago?

Ms Hutton: Definitely.

Mr Conway: Can you give us a few examples of their aggressive behaviour in the marketplace?

Ms Hutton: They've approached some of the larger customers prior to the bill coming out, looking to have customers sign contracts with them, now realizing that those contracts will be null and void.

Mr Conway: I've heard they've actually approached some of the smaller utilities directly and said, "Listen, would you be interested in selling to us?" Have you heard those stories as well?

Ms Hutton: I've heard those stories. They haven't approached us but I have heard the stories.

Mr Conway: Any other examples of Servco's newfound enthusiasm in the marketplace of southwestern Ontario?

Ms Hutton: I don't have any specific examples, other than just generally. They've been approaching a lot of our customers and customers in the surrounding area.

Mr Conway: The reason I ask the question is that last week we had the new president of Hydro, Mr Osborne, quite a formidable presence, tell us that it is the corporate strategy of the new management at Hydro to grow the

retail company. I just wanted to confirm that is the sense on the ground, at least in the London area.

Ms Hutton: Definitely. It will be our main competitor. That's the way we see it. We will be their main competitor.

Mr Conway: Just on that, because I've never been out actually selling electricity, or much else actually —

Mrs Johns: Selling every day.

Mr Conway: It's amazing how far I've gotten in this world. I used to be able to say it was all pensionable service.

What kind of instruments, what kind of sales tactics is Servco applying in the marketplace these days that might appeal to some of your customers that you mightn't be able to match, or are there any?

Ms Hutton: That we might not be able to match?

Mr Conway: Yes.

Ms Hutton: Price is one.

Mr Conway: Is that the big one?

Ms Hutton: Definitely.

Mr Conway: That's very interesting. The customers they've been approaching, they're the large customers?

Ms Hutton: That's correct.

Mr Conway: Another area I just wanted to touch on briefly, it seems to me that all of the literature I've seen about this new electricity business is that we're going to have to have a fairly aggressive campaign to reasonably educate consumers. Have you got any advice for the committee on consumer education and what should be done and by whom it should be done?

Ms Hutton: I think it should be done by the electricity suppliers, whether it be the affiliates or the distribution companies. I think we need to start relatively soon to ensure that the customers understand what deregulation is and what it means to them. It ended up being a real mess on the gas side. Customers still haven't made a choice because they don't understand the issue that's before them and they don't understand what their choices are.

The real problem we have in London is the power brokers who are out there, knocking door to door. I can give you an example of what's happened in London. We just gave back to our customers a surplus of operating capital of \$15 million from 1996. The power brokers approached our customers door to door, telling them that they wouldn't get their rebate unless they'd signed a contract to buy power from them.

Those are the types of activities that are going on right now with our customers, causing a lot of confusion. They seem to focus on a lot of the elderly who are really confused and don't know what they're signing. They seem to misrepresent themselves, to represent themselves as a local utility in order to get people to sign the contracts.

Mr Conway: Just on that, because the poor old brokers, as a group, have gotten a bit of a bad rap. I think we've heard in this committee several witnesses say there have been problems. I know I've certainly had some in my part of eastern Ontario. I can't imagine that they're all bad, but some of the behaviour seems to be quite extraordinarily bad.

Ms Hutton: We get daily complaints from customers because they feel they've been bullied into signing something. Sometimes they are left with a contract so they can read it over and have a better idea of what they've signed. A lot of times, they're not left with a contract. They've signed something and the representative goes away and they're not really sure what they have signed. They're confused whether they signed something with us or someone else.

Mr Conway: Is the problem almost always with residential customers or do you have some experience that would suggest that some smaller commercial customers also have some problems with the brokers?

Ms Hutton: Some commercial, mostly residential.

Mr Conway: And what you're seeing in the early going in the electricity market is that the electricity brokers are up to at least as many bad tricks as the gas marketers were.

Ms Hutton: Certainly. Yes, if not more, and they're offering them something — they really don't know what price they can offer the customer when we reach deregulation.

Mr Conway: So what do we need to do? The marketplace assumes a certain basic literacy, so caveat emptor, I suppose, is one part of the policy, but surely other things have to happen. What? Consumer education? Is there any sense that really bad players get penalized for truly bad behaviour?

Ms Hutton: I think that all the contracts need to be set aside day one and everybody starts fresh. You're talking about a level playing field. That's the only way we're going to get it, if everyone starts from scratch on day one.

Mr Conway: Thank you, Ms Hutton, and good luck.

Ms Hutton: You're welcome. Thank you.

Mr Lessard: I was curious as to why the utility restructuring group was established, how the membership got together and what the goals of that organization are.

Ms Hutton: The reason it got together, actually I initiated it and called some of the general managers from the area around our utility, as well as some other utilities that I knew. North Bay obviously isn't within our area. I asked if they would be interested in getting together and discussing some of the issues so that we were really on the same wavelength. With there being so many utilities in Ontario, it seemed better. If we were together and going through the changes as a group, we'd be able to make decisions and bring our positions forward in this manner so that we're heard from as one voice.

Mr Lessard: Are your members affiliated with the Municipal Electric Association as well?

Ms Hutton: We certainly are, yes.

Mr Lessard: OK. I hope you're all saying the same thing then. Are you, or are there some areas where you have some differences of opinion?

Ms Hutton: I'm sure, as in anything, there are areas where we have differences, but for the most part I think we're singing the same tune.

Mr Lessard: One of the things that we're concerned about of course are these energy brokers who are going

out there and basically selling boxes of smoke to people, because they aren't able to offer anything to people other than some hope that they'll be able to supply them energy at a lower price at some point in the future. They aren't licensed to do that selling right now.

Ms Hutton: That's correct.

Mr Lessard: I guess that if the legislation doesn't say that those contracts are void, we may need to make those changes to the legislation. But the complaints that you've been getting, are people going to have some other damages if the contracts are voided? Have they been having to pay deposits? If the contracts are void, will they still have some obligation or some losses that they have experienced?

Ms Hutton: I know when the gas brokers were out there, there were deposits required. I don't know of any of our customers who have given deposits, but they have signed long-term agreements, in some cases five years.

Mr Lessard: You were mentioning that people don't get their rebates for their gas supply, that somehow they've tried to tie both of those in together.

Ms Hutton: That's right.

Mr Lessard: They may have tried to deny people their benefits under their gas contracts and varied the original contracts with gas brokers somehow. I'd like to have a look at those contracts if anybody has provided those to you.

Ms Hutton: Yes, I have a file a few inches thick. You're welcome to it.

Mr Lessard: Are your members involved in or are you planning on any consumer education programs? Is that an initiative that you're considering?

Ms Hutton: We're already started. We've put some ads in the local newspaper. We've done some spots on television just through the local news station. We've also put some information in our billing inserts. We're trying to keep customers aware. It seems to flare up every once in a while that the media usually approach us for clarification and looking for help for the customers.

1530

Mr Lessard: Do you think that part of the reason that these energy brokers are out there again is as a result of the introduction of Bill 35?

Ms Hutton: Certainly it is.

Mr Lessard: That really points to one of the down-sides of the legislation. I wonder if you can tell us what you see are the benefits to consumers of your member utilities, and in the outlying area as well, as a result of this bill.

Ms Hutton: I think ultimately we're all looking for lower prices and better services for our customers, so on the affiliate side we're looking for competitive services, whatever they might be. I won't reveal any of our plans today, but there are all types of competitive services and products that will be available to the customers through the affiliate company. Competitive rates is what we're looking for. No one really knows in the Ontario Hydro price right now what we're really paying for on the

electricity portion of that. I think this will help to solve all of that and prices should be lower.

Mr Lessard: One of the things that you mentioned are the affiliate businesses as well. One of the suggestions we heard this morning was that section 72 of the Ontario Energy Board Act be completely eliminated so that there isn't the requirement of the 50% ownership of the affiliates to be involved in any other activities.

Is that a suggestion that you favour, or do you think there should be some minimums as far as ownership requirements? Should municipal corporations be permitted to be involved in any services without limits, or should the Ontario Energy Board have some jurisdiction in determining which business —

Ms Hutton: I don't think the OEB should have any jurisdiction in saying what businesses we're involved in. What you have to keep in mind with the municipal utilities is, we don't have any seed money to start up new business ventures like the private sector does. The gas company has the money from the shareholders that they're able to invest in developing new products and programs. We don't have that. On day one we don't have that, so we're actually starting from scratch.

What I would suggest is that we're allowed to pursue any business opportunities that we see that would benefit our customers, bearing in mind that under the Business Corporations Act the board of directors governing that affiliate company at that time will be ultimately responsible for ensuring that due diligence is performed before embarking on any new business ventures. They would be held accountable if any of those business ventures fail.

Mr Lessard: You're from London Hydro. Are you considering expanding the jurisdiction of your service beyond your current borders, and if so —

Ms Hutton: Yes, we are.

Mr Lessard: — do you think there's anything in Bill 35 that's going to be of assistance? Or do you see some hindrance there, either in the bill or with the attitude of Ontario Hydro that you've told us that you've seen some change in recently?

Ms Hutton: I don't think Ontario Hydro will affect it. I think it's more the mindset of the utilities themselves as to where they want to go. Some of them are reluctant to start amalgamations or mergers. That's what I said earlier, that I think we need some guidance as to —

Mr Lessard: So that's the reason you made that suggestion about the boundaries. Thank you.

The Chair: On behalf of the members of the committee, we thank you for coming forward. Mr Boushy welcomed us earlier. All I can say is that with each presentation we are more enlightened. We will leave here energized thanks to presenters like you.

Mrs Johns: On a point of clarification, Madam Chair: I just wanted to draw to the members' attention that in the bill, under section 75 of the Ontario Energy Board Act, we can get rid of or eliminate people who have a licence for a breach of licence. That's in section 75. In section 56 we can withdraw or make sure that people don't get a licence if they don't meet certain criteria. In subsections 25(3) and (4) of the Electricity Act we can void contracts

with Ontario Hydro and the municipal electric utilities if they enter into contracts prior to the time that the bill comes into force.

ONTARIO FEDERATION OF AGRICULTURE

The Chair: Now calling representatives from the Ontario Federation of Agriculture. Gentlemen, as representatives of the Ontario Federation of Agriculture, thank you very much for coming before us.

Mr Peter Canning: My name is Peter Canning. I'm executive director for the Ontario Federation of Agriculture.

Mr Darren Hannah: I'm Darren Hannah. I'm a policy analyst for OFA.

Mr Canning: I'd like to thank the standing committee on resources development for the opportunity to speak to this bill. I have provided a written brief that I'd like to be recorded.

The Ontario Federation of Agriculture is the voice of the Ontario farmer. We represent 40,000 farmers and about 30 commodity groups. Ontario agriculture has a lot of really good advantages. We have a very favourable climate, good soils, a very educated and skilled workforce.

It's also interesting that we have 100 million consumers within a day's drive of our area. Ontario agriculture and agrifood contribute about \$22.2 billion to the Ontario gross domestic product. We have approximately 672,000 people employed. It's interesting that 24% of Canadian agricultural products are produced here in Ontario.

Why are we concerned about this bill? Electricity is becoming increasingly important in the production of food. In 1996, farmers purchased approximately \$149 million of hydro. Electricity now represents a third of all input costs on to the Ontario farm. That's up from a quarter in 1980. The main reason for this is the increased automation on the farm, the increased consumption, increased technology that we now work with.

Given its importance, it follows that the price of electricity is a very important determinant of farm businesses. As the advisory committee on compensation on the Ontario electricity commission stated, "While electricity users have an interest in keeping the rates as low as possible, it is an especially important issue for the agricultural community and large electricity intensive industries that must compete in the global marketplace."

Ontario farmers currently pay the third highest electricity rates in Canada. The focus and the goal of electricity restructuring in Ontario must be on reducing rates for all electricity consumers — urban and rural.

What we're principally concerned about are three issues: the accessibility, the affordability and the reliability.

In relation to the accessibility, OFA is very happy to see there's a strong obligation to preserve "to serve" provisions that have been included in the legislation. However, we urge that the Ontario Energy Board, when given the power, be vigilant in enforcing its obligation on the "to serve" provisions. Farmers are not to be placed at

risk of shortage of supply due to the Ontario Energy Board underestimating the risk of energy shortage in a particular area. We ask that they would err on the side of security of supply.

In regard to affordability, the Ontario Federation of Agriculture believes that, if properly implemented, restructuring can lead to lower electricity rates. But several problems do exist with this current legislation.

The legislation does not entrench the principle of uniform or postage-type transmission pricing to ensure that rural customers are not disadvantaged because of the location. No provision is in place to ensure the maintenance of the rural equity in the existing Ontario Hydro distribution service areas. Local groups wanting to purchase an existing Ontario Hydro distribution area to establish their own municipal electric authority will end up paying again for the local distribution network. The cost, of course, will be passed on to consumers in the form of higher distribution rates. This, we feel, would run counter to the government's goal of reducing the cost of electricity through restructuring.

While we applaud the extension of the rural rate assistance benefits to the municipal electrical customers, OFA believes that the government should ensure through legislation or regulation that those who are currently receiving the rural rate assistance continue to benefit at least as much as they currently benefit under the present program, that those in need of assistance who beforehand have been denied access to the program now be included, and that the 15% rate differential goal be maintained or enhanced.

1540

If farm and rural customers are in any way disadvantaged in the changes to the transmission pricing, distribution, ownership or rural rate assistance, the Ontario Federation of Agriculture calls upon the government to exercise its powers under clause 80(1)(k) of the Electricity Act to reduce or remove the burden of competitive transition charge from farmers and rural customers to compensate.

Regarding reliability, the Ontario Federation of Agriculture supports the inclusion of provisions that oblige local electricity distributors to act as suppliers of last resort. The Ontario Federation of Agriculture cautions the energy board to be judicious in its use of provisions found in the Electricity Act that can exempt local distributors from their obligations as suppliers of last resort if sufficient competition exists in the local market. As we said before, the energy board should always err on the side of assurance of supply.

In conclusion, from the inception of the restructuring project, OFA has always stated that it is not opposed to competition in the electricity system as long as the interests of farmers are not compromised. Our position has not changed. The OFA believes that the interests of farmers can be accommodated within a competitive electricity system. By introducing the amendments we have proposed and addressing the questions we have raised, the government can ensure that a restructured competitive electricity system acts to enhance the compet-

itiveness of the Ontario agricultural industry, both in the domestic market and foreign markets around the globe.

The Chair: We have six minutes for questions from each caucus. We begin with the Liberal caucus.

Mr Conway: Thank you very much, gentlemen. A very helpful brief. One of the concerns I have, and others here: Dr Galt, Ms Johns and I, to name three, represent a good slice of rural Ontario with lots of farmers. Certainly, your members have been very quick to tell me, and I'm sure others, of their concern about the whole electricity business.

My first question: What assurance or comfort has the OFA been given, if any, by the Ministry of Agriculture and Food and/or Energy about the postage stamp transmission principle?

Mr Hannah: I put the question at the technical briefing that was held concurrently with the release of the first draft of the legislation to officials at the time, and they publicly gave assurance that postage stamp or uniform pricing would be the method adopted. Beyond that, the topic hasn't been raised since.

Mr Conway: So you were given some assurance by officials at that technical briefing that there was a commitment to postage stamp transmission prices.

Mr Hannah: Yes. If memory serves, I asked, "Will you be using postage stamp transmission pricing?" and the response was, "That is the intent." That seems to be clear to me.

Mr Conway: I'm sure Ms Johns will correct me if I'm wrong, but that is the operating assumption of the committee. There's no indication that there's any policy to the contrary.

Mrs Johns: No.

Mr Conway: Another area — again, I'm from eastern Ontario.

Mr Hannah: So am I.

Mr Conway: Where about?

Mr Hannah: Madoc, right on Highway 7.

Mr Conway: I was there last night. It looked like a very contented place at about 7 o'clock.

At any rate, the question about service: A lot of the people who were through the ice storm — but not just the ice storm; I guess the ice storm sort of brought it to a head. There's a growing frustration in my part of the province that the old days of good customer service from Ontario Hydro seem to have been substantially reduced. Do you hear much from your constituents at the OFA as to their general level of happiness or displeasure with customer service from Ontario Hydro retail?

Mr Canning: From our perspective the people in the eastern ice storm had nothing but praise for the service of Ontario Hydro. We have no complaints with the current service, no.

Mr Conway: No complaints at all?

Mr Canning: Not at this stage.

Mr Conway: That's good. That's quite encouraging because I certainly must represent the many — no complaints at all about —

Mrs Johns: Take yes for an answer.

Mr Conway: I'll be going to the OFA meeting at home and I'm going to want to report this.

Mr Gilchrist: You're bullying the witnesses.

Mr Conway: A very good point. But you don't hear any complaints even about the call centre at Markham?

Mr Canning: In relation to the ice storm —

Mr Conway: I'm not just talking about the ice storm; I'm talking about general customer service from Ontario Hydro retail.

Mr Canning: As a general rule, no, we do not have many complaints against them.

Mr Conway: I appreciate that; that's fine. That's a good answer and I'm happy to have it. Listen, we've got a big investment in public power. I'm not here to crap all over it. I hear some bitter complaints from people about the bloody number, but I'm not talking to 10 million people in Ontario. I'm prepared to get a direct answer that I may not necessarily like but I have to respect.

The rural rate assistance: What kinds of assurances have you been given at technical briefings as to where that's likely going to come to rest?

Mr Hannah: The assurances we've been given to date have principally come from the legislation itself and the notes attached therewith. We're still waiting to find out more, to be honest. That's why we've made it such a significant issue, because it is so vague right now.

Mr Conway: You've raised a number of issues in the brief. In terms of remedies, the difficulty I had is that I had a brief and you were reading from a text and they were not the same thing. It was problematic. Any specific advice as to how we might reasonably remedy some of the imprecision or some of the concern?

Mr Hannah: Which part of the imprecision are you talking about?

Mr Conway: I thought I heard you say something about vagueness.

Mr Hannah: Yes, with respect to rural and remote. In the legislation they talk about providing assistance to people who live in rural and remote areas. What does that mean? Define that for me. It's not at all clear.

Mrs Johns: I think that's the grandfathering clause, 78(2), he's talking about.

Mr Conway: Good. I appreciate that. Those are my questions. I appreciate the brief.

1550

Mr Galt: Thank you for the interesting presentation. I have a few questions more on what you didn't say — I'm a little surprised on some of it — than what you really did say in the brief. The first one relates to ozone and the levels coming across the lake and the damage to crops. The levels that we're seeing the highest, at Long Point, Grand Bend, Teeswater, are ozone plus some particulate; we have smog. We're hearing from a lot of environmentalists how much crop damage is done because of ozone. Of course, if we get these big fossil fuel plants generating electricity out of the Ohio Valley and out of Ontario, we can get a lot of NO_x, nitrous oxide, coming from them, the precursors of ozone. How much damage do you think occurs to Ontario crops because of ozone?

Mr Hannah: I have absolutely no idea. I don't have the technical background to answer that question for you; I'm sorry.

Mr Galt: It's interesting because I keep hearing, as the parliamentary assistant for the Ministry of the Environment, about the millions and millions of dollars of crop damage that's being done. If it's millions and millions, causing that much harm to agriculture, I'm sure you would be aware of it, so it's interesting, refreshing, that you're not aware. I think not knowing tells me an awful lot, that maybe it isn't all that great.

Mr Canning: I think it's interesting that this year we can't tell how much damage is from the environment because of the fact that we have no rainfall so the crops are not growing anyway.

Mr Galt: It's far more significant than the ozone.

Mr Hannah: If the Ministry of the Environment can do something about the rain.

Mr Galt: That's a federal responsibility. I don't know if you were here for the first presentation this morning. I have a little feeling that everyone, besides the committee members, should have to be here for the whole day's hearings and serve a little bit of purgatory. Since you missed it, it relates to, and you mentioned, the rural rate assistance. The presentation this morning — if I can quickly find it; I can't seem to lay my hands on it — had to do with they felt that for the stranded debt, rather than it being put on as an added bit on each kilowatt that was down the wire, each resident or each customer be charged for that as a block.

I protested it because of knowing what came to my office a year and a half or two and a half years ago when Ontario Hydro upped the rates for service something like \$40. My phone was just ringing off the wall because the farmers were upset that their second barn with a few light bulbs or a pump someplace — it was West Lambton and the recommendation that they were making said, "That the collection of the stranded debt be assigned in such a way as it becomes a fixed monthly charge per customer class, as opposed to a consumption charge per kilowatt hour that will act to stifle growth." Do you have any comments on that?

Mr Hannah: It's not something we've officially addressed in any manner. I'd be curious to see how it would work out. I don't know offhand. I recognize, though, that certainly in some instances where you have a farmer who has multiple services, I don't think he or she would be all that enamoured with the idea of paying a fixed charge on a service that's only in operation for two months of the year.

Mr Galt: My last question: Environmentalists are pushing wind and solar, understandably, also biomass. I haven't had them describe what they really mean in biomass as yet, but it would be products that would be produced on the farm to create steam one way or another, whether through fermentation to alcohol or whatever. How much biomass could be created in Ontario to create electricity?

Mr Canning: A lot of our farmers are interested in cogeneration issues with methane plants and all sorts of

wind and solar set-ups. We have the land base. There are farmers who are very interested in looking at this avenue. Once we get more details of how we can fit into this mould, I think you will find a lot more farmers will take up that issue.

Mr Galt: Solar farming. I turn to Mrs Johns.

Mrs Johns: I just have one question for you. I'm looking at your brief and I don't know if you touched on this. I'm looking at section 4.3 on page 8. You're talking about easements and rights of way. I'm on the fifth line of 4.3, "A number of farmers have easement/right-of-way agreements with Ontario Hydro and the status of those agreements must be clarified in the transfer process." Can you tell us what you'd like to see from a clarification standpoint. Do you want the same kind of agreement you have now? Do you want something different as a result of Bill 35?

Mr Hannah: Farmers are in the business of farming, not in the business of drafting agreements. To the extent that you can maintain what's in existence and just roll it over, I think they'd be just as happy. Every day you spend negotiating agreements is a day you spend away from doing what it is you're doing to earn your living.

Mr Canning: What we're trying to say is, if we're transferring to a municipal electric utility, we'd like the signed agreements that are already in place with Hydro to exist with the new utility.

Mrs Johns: It becomes obvious that we're looking to the Ontario Federation of Agriculture to ensure that section 78 and the Ontario Energy Act is appropriate. If we have any more comments I'm certain the committee would like to see any analysis of section 78 that you have, which is the rural rate assistance.

Mr Canning: We'd be glad to help.

The Chair: Gentlemen, thank you very much for bringing the farmers' perspective before the committee today. We very much appreciate — oh, sorry, Wayne. You were out for a moment. Did you have questions before we break from this group?

Mr Lessard: Just one question and comment with respect to the costs to transfer assets of Ontario Hydro to local utilities. We've heard this raised as a concern a number of times in other areas, but you give a very real example as to what might happen if the transfer of those assets is at market value and not at book value, as far as the impact that may have on the farm community, on rural consumers. That is a point that's well taken.

I wasn't here to listen to all the questioning. Mr Gilchrist isn't here. He usually raises this issue in his debates with the presenters. I don't know if you have any further comment with respect to that or whether it was raised while I was out, but it is well taken.

Mr Hannah: I think our comments are put about as succinctly as we can within the brief itself. It's an issue we believe to be of concern and we believe must be addressed in this province.

The Chair: We appreciate you talking the time to come to Sarnia this afternoon.

SARNIA LAMBTON CHAMBER OF COMMERCE

The Chair: Let's call representatives of the chamber of commerce. Good afternoon. Welcome to the committee. For those of us who were able to attend your luncheon, thank you for your hospitality today at noon. We much appreciated it.

Mr Michael Van Pelt: I'm Michael Van Pelt. I'm the general manager of the Sarnia Lambton Chamber of Commerce. Lyall Snively is a member of our energy committee and a site manager for Air Products, one of the major industries in our petrochemical complex. Joe Zanyk is an energy consultant. The reality is, he's the father of cogeneration. He's been with Dow for 35 years. I would suggest that few you have met are more knowledgeable than he is in some of these areas.

Thank you very much for the opportunity to allow us to present. We'll try to be brief and to the point. Our thrust is not to get into the minor details of the legislation. We want to take more of an overview, a philosophical approach, and also give you just a quick sense of what this really means for Sarnia-Lambton. Many of our members at the chamber have already presented to this committee during the course of today and dealt with some of the more specific issues. Our analysis is that the chamber saw a lot of consistency in those messages.

We'll deal with some of the broader, but we think critical, issues. You have a presentation in front of you. I will try to move through that as quickly as possible. I know it's been a long day for all of you.

Just a quick look at the table of contents on page 2 to give you a sense of some of the issues we want to deal with: some quick background; the whole issue about competitive prices and how that affects Sarnia-Lambton; some issues surrounding cogeneration issues and then some specific concerns to Bill 35 itself.

With respect to the introduction, a number of key points: The Sarnia Lambton Chamber of Commerce is in support of Bill 35, the Energy Competition Act. There are many principles, but there are two principles we wanted to lay on the floor as being critical to why we support this. Number one is really efficiency. The impact of the legislation, with a few assumptions having to be made, will allow the energy industry to operate with a higher level of efficiency. That's on a much broader basis. Number two, Bill 35 will create a more competitive marketplace, causing real investor confidence and more jobs for Ontario and more jobs for Sarnia-Lambton.

The primary reason for the Sarnia Lambton Chamber of Commerce supporting this legislation is that the success and prosperity of our whole community, not just a single company or single group of companies, is at issue here. If you would evaluate communities all across Ontario, I think Sarnia-Lambton would be very unique in its dependency on the success of this legislation. So if we overstate our excitement or our concern about this piece of legislation moving in the right direction, it's because we're not talking about a specific industry here; we're

talking about our community, and the heart rings louder when you're dealing with those kinds of issues.

1600

Really we have four objectives, on page 4: to show how Bill 35 will protect our industrial base; to indicate how Bill 35 will prompt new industry growth — we'll do that by example; to illustrate how cogeneration opportunities are a natural for Sarnia-Lambton; and then some specific concerns about the legislation from a broader point of view.

Just a quick note on who we are: We are Sarnia-Lambton's largest business organization. We've been around for a long time, nearly 100 years. We don't plan to go away. Our energy committee is a very solid committee of the chamber, with a tremendous amount of expertise, as you can well imagine looking at the nature of our companies. Furthermore, it's very interesting that many representatives from Sarnia-Lambton not only have a role here at the local chamber but at the Ontario Chamber of Commerce, AMPCO and numerous other lobby and interest organizations that have input to this bill.

Just a quick community profile: I could really shorten this up and say that Sarnia-Lambton is the best municipality in Ontario.

Mrs Johns: Except for Huron.

Mr Van Pelt: We're looking for an argument here, aren't we? Huron's west coast is pretty good too.

We are, interestingly, the largest city on Lake Huron. I say that because most people don't know that and we'll get that changed.

Just a quick community profile for you: Obviously you are familiar with the substantial petrochemical complex we enjoy. I'm sure you're aware of the massive changes it has dealt with in the past number of years and our interest in moving the economy into more diversified environments. It's simply something that has to happen. It will happen and this bill will start that process. I'll get to that later. So that for community background.

A quick background on page 7: This is a little bit disturbing and quite interesting. We tried to make the background as quick as possible so we did it on one single page. In the past, 55% of the Canadian chemical manufacturing industry was located in Ontario. Today, at present, 47% of that industry is now located in Ontario. You can imagine where it's gone. In the future — I'm not sure if this is exciting or if this is disturbing or what it is — and this is on a North American basis, of the \$55 billion in investment on the table right now, for 1998, less than 1% of that will be in Ontario.

We have a major petrochemical complex here. We have major amounts of capital investment. I'm not sure how we deal with this background. I think the legislation maybe has some answers for that.

Moving to page 8, competitive power prices in Sarnia-Lambton, I've just stated basically that the petrochemical industry will exceed \$50 billion in 1998. We have a negligible amount of that.

Two points: To forecast the effect the competitive power process would have on investment conditions is very difficult. I don't think anyone would be able to

provide you with a straight answer. All we need, though, is a small percentage change and it could have a very positive effect on the economy. We don't need dramatic change. Especially the companies that we're dealing with, if you look at their controllable cost of operations, which is a very small amount of the total movement of dollars, at first glance that's not important, but at second glance, when you look at the controllable factors, it's a very important issue, and we'll prove that.

If you look at page 9, under what we call power costs determination, this is interesting so I'm just going to read through it. The United States Gulf Coast petrochemical producers are projecting new production electricity costs in the range of 2.5 to 3.0 cents per kilowatt hour. This represents approximately half the amount of the large industrial user rate and one third the Sarnia medium industry rate. A reduction to this level would represent an annual savings to the typical Sarnia petrochemical producer of approximately 10 million to 12 million bucks. It doesn't look like a lot of money, but in a very, very competitive environment, it's a lot of money. Therefore the point is that it's only a small fraction of the total variable cost but it's enough to make it a competitive issue and for us to either lose or win companies to the Gulf or to Alberta etc.

In illustrating what we mean by protecting our industrial base, we thought we could make all kinds of arguments to do that but the best way to do that was simply by an example. Pages 10 and 11 are an example, so could you work with me to try to understand this.

Just a note from the energy white paper to remind ourselves: "Ontario industries now pay considerably higher rates than their competitors in most other Canadian provinces. They have a narrow rate advantage over their US competitors." Not true in the petrochemical industry. Our competitors, both in the Gulf and in Alberta, have better rates than we do now, except for some innovative exceptions here in Sarnia-Lambton which we'll get to.

There's a report that went out from Environment Canada, called Opportunities of Industrial Ecological Parks in Canada — Case Study: Sarnia-Lambton Industrial Complex, that illustrates this very powerfully.

In the context of the cogeneration alliance, which I know the minister had an opportunity to see today — that's basically a very innovative joint cogeneration venture between Bayer, Dow and Novacor — the article stated:

"Novacor Chemical...needed an economical source of steam to make its styrene unit more efficient in a very competitive market. An additional driver for Nova was the fact that rising Ontario Hydro power rates were threatening the styrene unit's competitiveness. Nova could have installed a package gas turbine to generate its own power and steam at a marginally higher cost. Their decision to seek a pooled solution" — the joint venture — "was based on a conscious effort to prevent downsizing of other operations in the Sarnia-Lambton complex and to maintain the critical industrial mass in the area to avoid further decreases in competitiveness vis-à-vis the Gulf Coast."

This is a very solid example that if it weren't for the innovation here locally to really skirt an existing environment, ie, the Ontario Hydro environment, we would not have this plant here. We'd be losing. We wouldn't be able to protect our industrial base. That's how far we've gone already, to this point. It's a very powerful example of how we need to protect our industrial base.

The next one is a case study — if you could just flip to pages 13 and 12; I apologize for this collating challenge at the office, as we call it — of the H.C. Starck plant. This is to illustrate the potential for new industry. It's the same principle as the joint venture.

In 1995, Bayer subsidiary H.C. Starck decided to build a \$50-million plant in North America to manufacture nickel hydroxide and tungsten. Every existing Bayer manufacturing location was considered for this plant. There were four criteria: proximity to large North American market; trained and educated workforce; good existing site infrastructure; low energy cost compared to other Bayer plants. I would like you to know that on the first three we were top-notch no matter what. If you look at the numbers in terms of the North American market, there is just no question where that plant would have been. If you look at the other issues, there's no question. If you go at the fourth one, low energy cost compared to other Bayer plants, there's our challenge, and we met that challenge, or Bayer did, through the joint venture.

Low energy cost was perhaps the most tangible and significant issue in attracting this plant to Sarnia. The achievement of low energy costs in Sarnia is the result of innovative thinking and the development of the Bayer-Dow-Nova energy joint venture. Again, if it weren't for us being innovative in skirting the existing problem we had, which the bill is trying to deal with, I'm not sure we would have H.C. Starck either. So there's two.

Just by example, to prove how critical this is for our community — you can make strong arguments but the examples hit home a little harder — the challenge in this case study is this, and we're now going into the future. Bayer plants in the US Gulf Coast area are in the process of constructing projects that will reduce energy costs by 15% to 20%, making them more effective, more attractive than Sarnia. It never ends.

Bayer announced in April 1997 that it intends to spend US\$4.6 billion in capital and \$4.1 billion in R&D up to the year 2000. The Bayer Sarnia site has the potential to attract a significant portion of that investment but it is competing with other Bayer sites. In the petrochemical industry or complex here, we're not competing against XYZ, a city in Ontario or another company in a city in Ontario; we're competing within our own family of companies. We have numerous multi-sited, multinational companies that are competing within their own families. Timing is an issue here. Technically, we could be losing a plant tomorrow or today or yesterday or a week from now, so critical by example again.

1610

Now to cogeneration opportunities: Sarnia-Lambton is poised for cogeneration opportunities and investment. It's

estimated that we could attract over \$1 billion in investment in cogen. As you know, over \$500 million has already been identified. We know confidentially that there are other projects in study or about to be on the table that will reach the \$1-billion mark.

Just to create a sense of why this is so important for us, we do have the infrastructure. Looking at page 15, Sarnia-Lambton has the infrastructure for cogeneration: ample steam load; ideal industrial cluster of energy and petrochemical companies; substantial supply capability and demand requirements; and affordable feedstock.

We have a cogeneration mentality and mindset. Joe is really a symbol of the fact that we have that mindset. Sarnia-Lambton's advantage from existing cogeneration opportunities is that we have a very successful history of cogeneration, starting, by the way, in 1963. So this is nothing new to Sarnia-Lambton: 1963, first initiative; 1972, next; constant movement since then. So a strong basis for cogeneration here, and we'll make some arguments later for how the government would look at that in terms of potential models.

Another major factor which you've been inundated with from many members who have presented here is the notion of trading public debt for private investment. Again from the white paper: "The Ontario taxpayer guarantees the debt of Ontario Hydro." I'm not sure whether they're going to guarantee the debt of the new companies either, but we're moving in the right direction here.

Very simply, the private sector has a proven track record at producing lower-cost energy. Coupled with a strong private sector investment interest, cogeneration is an ideal alternative. Its benefit to the Ontario consumer, besides lower-cost power, is that it doesn't risk public funds; reduced liability to the Ontario taxpayer. Considering your most recent presenter, it definitely does have significant environmental benefits over fossil fuel.

Moving to page 19, diversifying the Sarnia-Lambton economy, this is what our challenge is. In fact, we are a single-industry economy, or we were a single-industry economy. We're moving away from that very quickly. We've experienced dramatic downsizing adjustments.

Even changes in technology that mean capital investment into the petrochemical sector will not necessarily constitute job creation. In fact, it will often mean the opposite. A couple of weeks ago I went to a plant with a \$30,000 expansion and it will save them 10 jobs. So it's interesting; you have a \$30,000 expansion at XYZ company and you think the jobs are going to come along, but they don't. The mindset is to make sure we look at that from a positive point of view, not a negative point of view. Our companies need to be at the forefront of technological advantage.

Moving finally to concerns and recommendations, some of these we will give lightly.

The Sarnia-Lambton Chamber of Commerce supports the suggestion of the Market Design Committee regarding breaking the generation company, Genco, into smaller units. Our concern here is not as strong as that concern, but it needs to be stated.

The chamber further recommends serious consideration by the government to allow private sector ownership of the assets of the generation company. We know there are various ways of doing that. We know you've already been presented with various options for doing that. We're not going to make recommendations on what those options should look like. Let's get the legislation through and let's get this inquiry moving immediately upon the bill being passed. We know you can't accomplish everything all at once. We're understanding of that.

The chamber of commerce is very concerned that with a single public generation company and a single shareholder, namely, the province of Ontario, the government will have a strong incentive to maintain Genco market share control to increase its revenues. Please do not interpret that as a lack of confidence in governments, but in difficult financial times it's very interesting how innovative we can be to try and bring revenues into government coffers. We'll leave it at that.

What is not in Bill 35 is probably of more concern than the bill itself. The chamber is concerned that the devil is in the details — and probably everyone has said that to you — details not yet known. In fact, the philosophical intent of the legislation as noted in the white paper can be completely undermined by what is not in the bill.

The level of debt attributed to new companies will be a determining factor to how competitive they will be in the private sector. If the level is improperly determined, it will undermine private sector willingness to invest in an anti-competitive environment, again a very popular concern by my reading of some of the reports you have seen.

Quite frankly, we are concerned that the process to establish stranded debt, if there is any, will receive political interference.

Next, establishing unfavourable distribution costs, ie, the whole wheeling charges issue, will put the private sector at a competitive disadvantage to OEGC and OESC.

This one probably is the most critical one: Timing issues surrounding regulatory issues not in the bill could undermine present initiatives for expansion. Quite frankly, companies won't wait forever, and they need to know hard facts if they are going to make decisions. You can't make decisions without wheeling charges being known and you can't make decisions without some indication on the stranded debt. Especially in Sarnia-Lambton, where we are dealing with families of companies that are every single day looking at whether they can bring a plant in or not, timing is a very important issue. We urge you to move the process, and Minister Wilson indicates that he intends to do that — anything to move this process quickly.

Finally, a specific concern to our community: The chamber is very concerned about Ontario Hydro's dealing with the Moore township public utility. You have already had that presentation. Our concern is their concern in this case. However, the timing of Hydro's change of direction on the purchase price of the infrastructure is suggestive of Ontario Hydro's manipulation of industry adjustments caused by Bill 35. This action must end. We say that cautiously. That's not an accusation, but one might be prompted to think that when they look at this situation.

Madam Chair and members of the committee, thank you so much for allowing us to make this presentation. It is a presentation on behalf of the 750 members of the Sarnia-Lambton Chamber of Commerce. Thanks for your consideration.

The Chair: We have five minutes for questions from each caucus. We begin with Mr Lessard.

Mr Lessard: I'm interested in knowing what your concerns are about the establishment of the stranded debt, especially as it relates to the possibility of political interference.

Mr Van Pelt: You saw how we wrote that. We wrote that very carefully. You can try to push us to make a strong comment on that and it won't come. We all know the realities. If you owned Ontario Hydro right now and had to be ready by the year 2000, you would be using all the efforts and knowledge and influence you have to put yourself in the best economic position ready for 2000. All we're saying is that we want to make sure that this is dealt with with complete fairness and there is no political push to weigh strength one way or the other.

Mr Conway: Helen, defend yourself.

Mrs Johns: I don't need a defence; this bill is defence enough.

Mr Lessard: Ultimately you recognize that this is going to be a political decision and that the government has the real interest, the financial interest, one that I'm sure they will take into consideration when that amount is picked.

One of the things that I've been suggesting is that perhaps we should have somebody involved in the process other than the Minister of Finance. Perhaps the Ontario Energy Board should have some responsibility to look at the process and determine the amount. If there is a transparent process and those who are stakeholders have an opportunity to participate — in the end, we were told yesterday by Dr Bryne Purchase, who has done a lot of work on the process to determine the stranded debt, that whatever number we pick it's going to be wrong. At least, if it's going to be wrong, we should have the comfort of knowing that we have all participated in it.

1620

Mr Van Pelt: I think just the reality of acknowledging that this challenge exists is probably the most powerful step to make sure that it doesn't. From the point of view of business, we elect people to the Ontario Legislature and that's part of their job. Also, we would suggest to take that challenge and make sure it's part of the marketplace of ideas in this decision-making process, but we're not going to be pushed to the point where we're going to bring that any further. Being said is the most powerful way of solving a problem.

Mr Lessard: You have also indicated — at least this was in the slides that you provided — that you need some indication whether in fact there will be lower energy costs. My suspicion is that in the short term there may very well not be lower energy costs, and even if there are, in the long term it's possible that not all consumers will benefit, that perhaps large consumers whose interests you have talked about here this afternoon will be able to benefit

from lower rates, but a whole lot of other people won't. To protect them, we have asked that there be some guarantee in the bill that there be lower prices. I don't think the government is going to do that, but I wonder if that's the sort of indication that you might like to see.

Mr Van Pelt: Let's let the marketplace work. Who knows? That means the prices can go up or they can go down. But I would suggest that from the point of view of the chamber of commerce we're very confident of the marketplace. I think more the concern is to make sure that the marketplace will be able to act as it should. That issue reverts more to a timing issue. We know it's going to take time to deal with the fallout with regard to pricing. However, I guess the background to that is that the faster we can get to that, the more ability companies, our members, have to make decisions, the quicker they will be able to make decisions for investment, which is good news for us. I think that's where the motivation is to the point you made there.

Mr Boushy: I just want to say that I think members of this committee from both sides would remember the lobby I made in regard to Bill 31. Bill 31 is labour law, and basically what it does is give the opportunity to lower the cost of construction in Sarnia and Ontario. My question to you is, is there anything in Bill 35, is there an implication — because we have counted on Bill 31, the labour law, to bring industries and opportunities and jobs to this area in Ontario — to hinder that effort or, in your opinion, does Bill 35 complement Bill 31 and bring more investment to this area as well as Ontario? How does it complement, if you think it does complement?

Mr Van Pelt: You can fight to get into the details and find some problem, possibly on the labour issue side of it or the human resources side of it, but philosophically these are two complementary pieces of legislation.

Mr Boushy, you know that it's going to take a lot more than that to make changes for the better in Sarnia-Lambton, but these two pieces of legislation are critical, especially for our petrochemical industry to be able to grow and diversify. We don't see contradictions in that legislation. Let's just get the job done.

Mr Boushy: Just from a selfish point of view — I'm talking as a member from this area — you and I know the industries are thinking of coming to this area, as well as Ontario, regarding Bill 31. Do you know of any more companies that would come that I'm not aware of? Can you predict any more growth?

Mr Van Pelt: — a \$1-billion investment. You might be more aware than I, but there are some that we know exist you simply can't put out into public discussion. The concern is if you take both pieces of legislation, philosophically they're going in the right direction, but even the labour bill, and this bill is no different — it's in the details. Let's see, on the labour side, how the project agreements get negotiated. If they don't get negotiated effectively, we're in a tough spot. The same with this piece of legislation. If we don't get good, solid indication on the stranded debt issue, or if the new Ontario Hydro companies don't have appropriate debt, they'll create an anti-competitive environment. What's it all mean anyhow?

It is in the details. But philosophically, this is good news on both fronts.

Mrs Johns: Can you tell us how long Sarnia-Lambton has felt that there need to be changes in the electricity structure in Ontario and how long you've been making your views known to political people?

Mr Van Pelt: I'll defer that one to Joe.

Mr Joe Zanyk: Would you mind repeating the question?

Mrs Johns: I guess my question was that I'm sure that this change you felt you needed — I've been provoked, I have to say that. You've been asking for this change for quite a while. I would assume that all through the 1990-95 time, when the NDP were in power, you were asking for changes to be made in this bill and they didn't come. Is that correct?

Mr Zanyk: That's right.

Mrs Johns: So from that standpoint, when the opposition says things like they do here, they could have done something to move this bill forward and basically chose to ignore your requests.

Mr Zanyk: That's correct, and even going longer than that.

Mrs Johns: Oh, 10 years. The 10 last years.

Mr Zanyk: There's been a need. This is something that I believe a lot of people don't understand. Recently, the word "cogeneration" has been very bantered around. When I was first involved with it, we called it "saving money." It has to be recognized, though, that there's a limited amount of capability of cogeneration. That is making electric energy and heat energy, steam, and supplying that to the industry's needs.

Sarnia has a great opportunity for that, because of the petrochemical industry. The attitude of Ontario Hydro has restricted that type of expansion, even to the point that where the industry had made changes and had surplus energy to sell to Ontario Hydro or to sell among themselves, they were restricted, causing the industry to cut back and shut down some of this cogeneration capability, which hurts the whole province.

Considering one key factor that I mentioned to Mike earlier, which is that Ontario does not have a great, vast resource of hydrocarbon energy like Alberta, or Ohio in coal, we have to import all that. In the form of not using that energy efficiently, we as a province suffer by paying other people a profit to bring in their energy to our province. By having cogeneration we could improve our efficiency, save that effort and give ourselves better opportunities to be competitive.

I'll go back a little bit in my history with Dow Chemical. In 1970, Dow Chemical felt that because of their chemical business they could not afford to continue to buy electricity from Ontario Hydro and be competitive with their sister companies down on the Gulf Coast. That made a major decision to add to our cogeneration plant at that time, competing against fuel prices where down on the Gulf Coast it was 10 cents a million BTUs for gas, versus natural gas in Sarnia that was 40 cents. However, because it was 10 cents on the Gulf Coast, they were very ineffic-

ient. We put together at Dow a cycle efficiency of 83%, which made us competitive.

That brought into Dow at that time an additional chloralkalide plant, which was a multi-million dollar expansion. That plant ran and was, of course, unfortunately shut down because of competition last year. But at that time, 1969-70, my assignment at Dow was to find a way of producing cheaper electric energy and be competitive with the Dow Chemical plants in Louisiana and Texas. The result was a cogeneration plant which was the most efficient one in all of the world at that time. We were very proud of it and we were very successful.

We were also very successful, at that time, because of political pressure to export 50 megawatts of power that was surplus in Sarnia to our sister plant in Michigan. That took a very big fight with Ontario Hydro, and the other utilities — Detroit Edison and Consumers Power — to do that, but it showed our ability to generate cheap energy here by our infrastructure. The resources are there. It was just a matter that too many people didn't like that resource and didn't want that competition in their backyard. This is an opportunity, as I see it, to change those laws and change the rules. Sarnia could handle a tremendous boost.

1630

Mr Phillips: I appreciate the work of the chamber and I appreciate the work of volunteers at the chamber as well.

On the first part of your presentation, it's going to happen, it's a done deal. The bill will pass this fall and the cogeneration will move on.

I want to focus on the last two pages of your presentation, the concerns, because this is huge. We're talking about a debt at Hydro of, I don't know, \$30 billion, a stranded debt of somewhere from \$15 billion to \$20 billion. That's going to impact every business in Ontario, not just the ones in the Sarnia area.

Essentially what we're betting on here, as you point out in your brief, is that Genco, or Hydro's generating company after this, will retain 100% of the generating capacity that it currently has and will pick up an unknown amount of stranded debt. It's a huge issue, because if it's not properly allocated, it's going to have a huge impact. But we're also being told that the reason for Genco to keep all of this is because it is going to be able to sell into the northeast US profitably.

An alternative would have been to say, "Listen, these assets will never be worth more money than the day the bill goes through, because that's the day that all the other competitors start to build their plants." I think it was you who said there is \$1 billion worth of investment, much of which we don't know about. I think right across Ontario there are all sorts of companies just waiting to build generating plants. Hydro will have 100% of the capacity and the jewels in its empire will be picked off. The best jewel probably is the petrochemical industry right here. But there will be other jewels across Ontario picked off quickly, leaving Hydro with loss of a lot of its profitable clients, customers, and with a lot of excess capacity.

My question to the chamber is, because you people know this, is the legislation being realistic in assuming that Hydro can sell profitably into the northeast US?

Mr Van Pelt: There are a couple of questions in that. I'll respond to the first one. I don't think you're going to see the Sarnia Lambton Chamber of Commerce make strong statements in terms of the nature of what Genco should look like past the legislation. The legislation is going to go through; we're going to have a Genco. We're saying that consideration and serious inquiry into how that Genco company looks or whether it should be broken up — that it should be broken up, rather — has to happen. That consideration and inquiry has to happen immediately.

Mr Phillips: Before the bill is passed?

Mr Van Pelt: No. Let's get the bill passed, OK? If we start playing with those kinds of issues, we might have an election by then. Who would want to see a bill die on the order paper? Let's get this job done. That's what industry is telling us. That's what our members are saying to us: "Get the job done." But immediately let's start dealing with the issue of ownership, public equity or private equity possibly into Genco or Servco. That's as much of a statement as we're going to make on that particular issue.

Mr Conway: Just on that, can I ask, would you sign a commercial or a private residential mortgage on those terms?

Mr Van Pelt: Explain on what terms.

Mr Gilchrist: He has already got the mortgage. You are asking him to refinance.

Mr Conway: My point is that this is a critical question, and it's not easy.

Mr Van Pelt: I'm wondering if it's a hypothetical one, though.

Mr Conway: It's not a hypothetical question and it's not an easy question. There's a bit of mischief in asking it, but we are trustees for the broad public interest. It's a very critical question. I don't profess to have all of the answers. You people are in business. All I know is that if I went to renegotiate a mortgage on my house, let me tell you, I'd make an investment in prayer in terms of young Mike here, who looks like a good guy and is a good banker, but prayer and faith are only going to get me so far. There is a point where I want to see details before I sign, and that's my problem: I'm being asked by a lot of serious, responsible people to kneel down, pray like hell, sign quickly and hope the details work out reasonably. Now, I want to hope for that, truly I want to hope.

The Chair: We have to wrap up.

Mr Van Pelt: That's definitely dramatic. Let me answer your first question. I'd go for a mortgage right now with a line of credit rather than a five-year. I don't know if that answers your question.

The Chair: At that point, we must stop, colleagues. We thank you all for coming before us this afternoon. It has been a very interesting afternoon here in Sarnia. We've really enjoyed our visit here. We thank you all for the input we've received. We are going to adjourn.

Colleagues, there will be taxis waiting in front of the hotel in about six minutes to take us to the airport. We will meet in front of the Legislature tomorrow morning at 8:15 to be picked up for the tour. We'll be adjourned formally until the afternoon session at 1 o'clock.

The committee adjourned at 1636.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Président

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr Dave Boushy (Sarnia PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Mr Gerry Phillips (Scarborough-Agincourt L)

Also taking part / Autres participants et participantes

Hon Jim Wilson, Minister of Energy, Science and Technology

Clerk pro tem / Greffier par intérim

Mr Tom Prins

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service

CONTENTS

Tuesday 18 August 1998

| | |
|--|-------|
| Energy Competition Act, 1998, Bill 35, <i>Mr Wilson</i> / | |
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, | |
| projet de loi 35, <i>M. Wilson</i> | R-259 |
| West Lambton Electric Utility Restructuring Steering Committee | R-259 |
| Mr Robin Moore | |
| Mr Doug Darrach | |
| Moore Township Hydro Electric Commission | R-263 |
| Ms Jane Marsh | |
| Guelph Hydro | R-267 |
| Mr Dan Moziar | |
| Mr Jim MacKenzie | |
| Trigen Energy Canada | R-272 |
| Mr Derek Macartney | |
| Ms Susan Shaw | |
| Mr Mark Hall | |
| Sunoco Inc | R-277 |
| Ms Gia DeJulio | |
| Mr Don Heath | |
| Windsor Utilities Commission | R-281 |
| Mr Kent Edwards | |
| Citizens Environment Alliance of Southwestern Ontario | R-286 |
| Mr Rick Coronado | |
| TransAlta Corp | R-290 |
| Mr Jim Dinning | |
| Mr Barry Chuddy | |
| Sarnia Regional Cogeneration Project | R-295 |
| Mr Mike Ireland | |
| Mr Ken Ball | |
| Mr Martin Bruce | |
| Electric Utility Restructuring Committee | R-299 |
| Ms Nancy Hutton | |
| Ontario Federation of Agriculture | R-303 |
| Mr Peter Canning | |
| Mr Darren Hannah | |
| Sarnia Lambton Chamber of Commerce | R-306 |
| Mr Michael Van Pelt | |
| Mr Joe Zanyk | |



R-8

R-8

ISSN 1180-4378

**Legislative Assembly
of Ontario**
Second Interession, 36th Parliament

**Assemblée législative
de l'Ontario**
Deuxième interession, 36^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 19 August 1998

**Journal
des débats
(Hansard)**

Mercredi 19 août 1998

**Standing committee on
resources development**

Energy Competition Act, 1998

**Comité permanent du
développement des ressources**

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



**Chair: Brenda Elliott
Clerk: Donna Bryce**

**Présidente : Brenda Elliott
Greffière : Donna Bryce**

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 19 August 1998

Mercredi 19 août 1998

The committee met at 1301 in the Novotel Hotel, Mississauga.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

CITY OF MISSISSAUGA

The Chair (Mrs Brenda Elliott): Good afternoon, everyone. The standing committee on resources development is called to order for the purposes of receiving submissions on Bill 35. Our first presenters this afternoon are representatives from the city of Mississauga. Welcome to the committee. As you begin, please introduce yourself. You have 30 minutes for presentation time. Committee members are always happy when they have time for questions.

Mr Dave O'Brien: Thank you very much, Madam Chair. My name is Dave O'Brien and I'm the city manager of the city of Mississauga. Let me first apologize for the fact that Hazel's not here. Steve, she sends her best.

Mr Steve Gilchrist (Scarborough East): I'm not rushing.

Mr O'Brien: Hazel's out of town, unfortunately, and would have very much liked to be here and asked that I fill in for her.

We've handed out a submission that I think all the members have. I don't propose to read it. I'm going to touch on a few points and try and entertain questions, which I think might be a little more pertinent.

The three points Mississauga would like to touch on are, first, the concerns we have with the legislation with respect to the potential of depleting the value of our asset; second, whether the legislation will potentially reduce our revenue or obligate us to make payments from which we

are presently exempt; third, that the impact of the proposed changes are not really understood by the public, by the consumers. I'd like to take perhaps 10 or 15 minutes and touch on each of those, and then we can have some questions.

Having said that as an introduction, I'd like to say up front that we generally support the changes that are proposed in the legislation, particularly that the interests of the consumer will be respected. That's a theme that seems to run through the legislation and we hope that is in fact the case when all is said and done. We in Mississauga, as I'm sure my friends from Hydro Mississauga will tell you when we speak, have the lowest rates of any hydro utility in this province and we use our hydro company and those subsequent rates to ensure that we can attract and maintain industries and manufacturing establishments in our community.

The first thing I'd like to touch on is hydro as an asset. You will have probably heard from many speakers to date and will hear in the future in your submissions that there is a general concern about the stranded debt and how it is to be dealt with. We are very concerned that the stranded debt be transparent and as easily understood as possible as it's being allocated across the province.

We feel that the OEB should have a role in ensuring the fairness of the allocation of the debt. Hydro Mississauga works on a very low margin, and debt transfer is going to have a significant impact on the consumer and on our ability to compete in the future. That's the first point with respect to the asset and the impact of the legislation on the asset from a debt point of view.

The second thing we're concerned about with respect to our asset is that the legislation seems to imply that the competition will have access to our consumer base. We feel this is wrong, and we feel it's wrong because it will allow the competition to pick off the best high-use customers, leaving the local utilities with the customers that are less profitable, if you want. One of the ways we keep our rates low in Hydro Mississauga is that we, as I believe most utilities do, pool the good ones and the bad ones. That allows us to keep the market fairly flat. If you allow the good ones to be picked off, inevitably the rates will increase.

We also have a process in many utilities in Ontario, in their relationship with the municipality, where there is a cross-subsidization of our businesses, not that we give each other money, but that we operate by sharing

overhead duties. For instance, it's not uncommon for a common accounting system to be in place, a common human resources system, a common IT system. You'll find that in many utilities, particularly in the smaller communities across Ontario.

If the legislation does not allow this to continue or it allows it to continue in one sector which could be a competitor and not in the present circumstances, we feel that would be a detriment to Hydro Mississauga's ability to operate in the fashion that it has and also for the customers, who are inevitably taxpayers, to continue to enjoy the low rates we've put forward.

The second point I'd like to address is the financial issues. The approach that's being proposed to debt retirement will undoubtedly, unless it's managed properly, have an impact on the rates. The proposed legislation has to be very careful in allocating the stranded debt across the various utilities in the province. There is no doubt that the debt has to be retired, that's not an argument, and there's no doubt that the proposed way of doing it is probably as good a method as you're going to get. The problem is that defining and allocating that debt, first to the two operating arms of the newly created hydro companies, has got to be such that a fair amount of that debt is placed there and it's not passed back on to the local utilities which in turn are going to have to pass it back on to the consumer, or whatever becomes of the local utilities, whether they're sold or not.

We are concerned, and you will hear this from AMO tomorrow, that one of the options to retire the debt is to grab any increases in payments in lieu of taxes and allocate them towards the repayment of the debt. We feel that payments in lieu of taxes from Ontario Hydro and the utilities is one of the few ways that municipalities have access to tax revenue in areas where we can't tax, and to skim off — and I use that not in a derogatory way — the additional revenue we think is incorrect.

We have a concern about the proposed legislation and the implications of a transfer tax if the utility is sold after the two-year window. In some cases it may take longer than two years to determine whether the asset will be sold, if in fact it is sold, once it is created as a corporation under the business corporations legislation. If there are additional transfer taxes required at the point of sale, it is our feeling that those will come back inevitably to be added to the overall rate to ensure that whoever purchases the company, or whatever business arrangement is made, can recover those costs.

We believe that there should be a one-time, forever exemption from transfer tax or any other additional taxes that are required, that the municipality would have to pay as it disposes of all or part of the asset. In subsequent purchases and sales, whatever happens with the balance of the asset, if the municipality only sells part of it, or if the new owner later on sells the company to another company, then of course those taxes can apply.

1310

The third point I'd like to make is that we are not convinced — and I don't know quite frankly how you're

going to do this, but I think the committee should spend some time discussing this prior to introducing the final amendments to the legislation in the fall. This change that is being proposed, albeit good from a business point of view — we support that and I think you'll find many people do — is a change to a very fundamental service that the public in this province has grown accustomed to. Hydro is something like water. It's the kind of thing that people hold near and dear to them. It's the kind of service they expect often to be provided by their public sector municipality or offshoot of the municipality. When you start releasing these kinds of very important, very dear services into the realm of the private sector, for whatever reason, be it competition or for monetary gain, you have to, we believe, be very careful in ensuring that the public understands what's going on and why it's going on.

If you put it in perspective, there is a very good possibility that when all is said and done, when the local municipal utilities have been created into businesses and purchases start taking place, be they complete purchase of the asset or partial purchase of the asset, it would not surprise me to have a number of large US firms involved in those purchases. You have to think of the situation that might ensue when you have a local utility that for 100-plus years has been owned by the local municipality, ie, the local taxpayers, now suddenly owned by an American corporation and the implications of that.

I don't mean to say that American corporations are bad. They are very well run businesses in many cases. But just think of the implications of that, think of the sense that would create in the eyes of the public. We feel it's very important that the committee and the government pay very close attention to how these assets are going to be put into play, so to speak.

We think that perhaps the energy board may be an agency that could be used to have a great deal of influence on the way this thing unfolds. We feel it takes it away from government per se and puts it in the hands of a more independent agency.

Finally, before I stop, we feel it is important that the regulations, when they are being developed, be done in concert and in full consultation with the Market Design Committee. The Market Design Committee is the representative of just about every interest group possible with respect to the energy sector. We feel it's important that the regulations — which after all, when all is said and done, will be the piece of legislation that really makes this thing work or not.

When I was involved with the discussions with the Urban Development Institute and the government on the changes to the Development Charges Act a few months ago, Mr Leach allowed the industry, the Urban Development Institute and a number of representatives from the municipal sector — I happened to be one of them, fortunately — to sit down and work out with the ministry staff the actual regulations that ultimately were put in place. Although we had our moments, we feel that in the end we got a piece of regulation that we were all able to work with. If we had concerns about it, we were able to

voice them to each other in the privacy of a meeting, as opposed to an Ontario Municipal Board hearing or other such public agency. So there is some benefit to be gained, we feel, in allowing the ultimate users of the industry or players in the industry, if you want, and we think they're represented by the Market Design Committee, to have some input into the development of the regulations.

With that, I'll stop and open it up for questions.

The Chair: Thank you very much. Five minutes for each caucus for questions; we begin with the government caucus.

Mr Gilchrist: I'd be happy to start. Thank you, Dave. Good to see you again. Even without Hazel, as usual you did a fine job of presenting the case for Mississauga. I think it is appropriate that we are holding one of our days of hearings here. You do have the lowest rates in the province. I think that's something that hopefully the other MEUs will give some consideration to at the same time they're considering the impact of Bill 35: precisely why there is such a huge variance of Hydro rates when you hit Etobicoke Creek.

You raised a couple of concerns. Let's flesh them out, if we can, a little bit more. First off, I think we can assure you that the process for determining the stranded debt will be very transparent. It will be easily confirmed. I don't think there is any sense that this is going to be something done in secrecy. Obviously, there will be a mathematical calculation that will support whatever number is selected. I hope that not just the OEB but anyone else involved could offer their thoughts if they think there have been any missteps along that way. We're getting that counsel right now. We've had a number of groups that have given some suggestions on how to determine it and I'm sure the Minister of Finance has taken that into account.

You raise the point about taxation and PILs in particular. I tried to read your entire brief and listen to you at the same time, but I don't see it in here. You are aware that it's only the increase in generating and wires; that you will have complete ability to tax any administrative building or office building as you would tax any other office building. There is no deviation there from your standard practices. You're still getting the \$86.11 per square metre that has already been the accepted norm for a number of years. I don't know if Mississauga has taken exception to that at any point, but few, if any, have. That seemed to be seen as a fair amount to date.

I want to give you this assurance and then I'd like your response whether you still have concerns. Whether that or any of the other five or six taxation options are used, individually or jointly, to pay down the stranded debt, every dollar that is collected in that case — let's say that one that's chosen — would go towards paying down the stranded debt, would therefore offset the cost of electricity supplied by Hydro, would therefore come back to presumably benefit your consumers by having lower rates. Currently 40% of every dollar you're paying goes towards that debt servicing of Hydro. If we take a chunk of that off and pay for it some other way, and there cannot and will not be an increase in costs attributable to that, would you

still have the same reservations? Or is it simply that you want confirmation that that sort of accounting does guarantee that if the PILs go up, the cost of Hydro goes down?

Mr O'Brien: Mr Gilchrist, the assurance we're looking for is probably twofold, that as you mentioned one would offset the other. But there continues to be a concern in the municipal sector, and you will hear it from most municipalities that will make a presentation to this committee, that the payments in lieu of taxes, whether they are the base — and I agree with you and I accept and understand that the base PILs being received by municipalities now for Ontario Hydro and the local utilities will continue. We hope that is in fact the case. I have to accept that it is. We would stress the point: Please make sure that you ensure it's the case.

Beyond that, the additional PILs are something — municipalities are concerned that the government has come to the PIL table or the PIL payment as a source of revenue to retire Ontario Hydro debt. Municipalities' sources of revenue these days are so tightly constrained that if there was an opportunity to get more PILs out of a new business, it would be to our advantage. We are concerned that they are being taken away and used to retire debt. I accept the fact and know clearly that every time I pay a Hydro bill at my house a portion of that is paying off Ontario Hydro debt. Definitely, we know that. But given the fact that our sources of revenue in the municipal sector are so confined, today more than ever, we do not accept the fact that the additional PILs should be used to pay off debt.

Unfortunately, I can't give you another source to do that, because your next logical question would say, "Where would you get the money from?" I can't answer that. But I challenge the committee and the government to look around and see if there's another way, because I really think it's difficult for the municipal sector to have to give up those PILs. I hope I didn't steal your question.

Mrs Helen Johns (Huron): No. Thank you for that answer. We appreciate that. All of the choices are always difficult when you have \$30 billion in debt and you're looking for some way to pay it off, there is no question about that.

You're the first presenter who has been in to see us who has talked about the two-year window. Many private sector businesses of course have come in and said: "This is not a level playing field. Come on. For two years they can transfer these assets and pay no tax, whereas if we have to buy them we have to pay tax." We're hearing the other side of the argument today, and I suppose if you were on the private sector side, you probably be arguing the other side, or I would like to believe you would be.

How can we maintain a level playing field if we do what you ask and say, "Hydro Mississauga, you can sell these assets out 10, 12, 15 years"? How does that level playing field, which is very important to attract business into this marketplace — how do they even think about coming in then?

Mr O'Brien: I think that the assets of the hydro utilities in this province, which are assets of the municipalities because we own them, are such that the private sector agencies that are wanting to come in and purchase these assets are going to be more than willing, more than eager to pay what it takes because I think they see a huge market downstream.

From our point of view, one of the things we have to try and maintain when we create our private hydro companies, as municipalities, is our client base. We have to be absolutely certain that we don't do anything to throw off the very sensitive balance that we've created with respect to our base.

With respect to Hydro Mississauga, our margins are very narrow. We don't make a lot of money and put it in our pocket. We put it back into our business. As you start throwing more costs at trying to — not even trying to. We have to create this new business come January. As you load it more and more with costs, the potential to lose that very delicate balance is created. We are very concerned about that.

1320

Mrs Johns: Wouldn't that probably be a windfall, as opposed to a cost?

Mr O'Brien: Listen, the municipalities will make money out of these sales, there's no question about it. But we will not be able to make those decisions lightly. The decision to sell your hydro utility, once it's created into a business, is probably the single most important business decision a municipality will ever make.

In the case of Hydro Mississauga, our asset is worth in excess of half a billion dollars. That's an awful lot of money. We don't make many half-billion dollar decisions in our lives as municipalities. You can't make those decisions on a purely business sense. You have to make them in the context of how that decision affects your constituents, the taxpayers.

Our taxpayers in Mississauga have become very accustomed to a rate that's very low. Our businesses have become accustomed to a rate that's very low. We attract businesses to our community because we keep our rates in pretty good shape. When you start fooling around with that, you open it up for all kinds of things — criticism from the public with respect to your selling an asset that's very near and dear to their heart, potentially increased rates to the residents, potentially increased rates to the businesses and potentially putting yourself in a less competitive position in the marketplace to bring business to your community. So all of those things come into the decision. If it was a straight business —

The Chair: I'm sorry, I'm going to have to interrupt because we should move to Mr Conway.

Mr Sean G. Conway (Renfrew North): Thank you very much, Mr O'Brien. I appreciate your very helpful testimony today.

I want to touch on two areas, the second first: consumer education. You make a very strong argument that for the broad base of the public out there, they're not yet very aware what changes are around the corner and how they

might affect the individual customer here in Mississauga or anywhere else in the province. Do you want to just expand on that point? What kind of public education or consumer education programs might in your considered opinion work, and who should undertake those?

Mr O'Brien: I think the best way to undertake that public education is to use the local MEUs to do that, and not burden them with the responsibility per se, but they have the best access to the marketplace through their billing process, other than perhaps sending out a water bill. There's a potential to penetrate the household with information.

I think more importantly than that, the government should look to a means whereby they can use — if you look, Mr Conway, at what has gone on with respect to the changes that we as municipalities have undergone in the last year, there has not been a lot of information that's gotten out to the public. Certainly the government has not put a lot of information out as an entity. Municipalities have scrambled and tried very hard to do so because it was left to them by default. I don't think that's what should happen here. I think if the government is initiating the change, the government should use its various mechanisms to do it. It has access to all the media. What's wrong with coming to a city council meeting and explaining it? What's wrong with going into communities throughout Ontario and having open houses with respect to the whole change process?

It's better to do it up front and to spend the time and effort than to have what we have now in Ontario with respect to assessment.

Mr Conway: Thank you. My second question and really my primary concern, then, your brief at the top of page 3 says:

"We don't suggest that there is anything wrong with the Minister of Finance" for Ontario "calculating the amount of the stranded debt, as is presently proposed by the legislation. However, the process must ensure that there is a mechanism in place that would afford an opportunity for interested parties to review this calculation."

As you indicated in your exchange with Mrs Johns and Mr Gilchrist, and I think we all recognize, there is very likely going to be a stranded debt. It is expected to be a multi-billion dollar stranded debt. I think the concern we all have is that there be transparency and fairness across all rate categories in the disposition of whatever that stranded debt is. By the way, I think you were talking about a half-billion dollar consideration that your municipality would have to make.

This is big business and we've got big debts but there are huge opportunities. We are going to create some exciting opportunity with this legislation, the principles of which I support. But we are going to more quickly than any other initiative I can think of create millionaires in this province. There is an opportunity here for gain that is very substantial.

One of the obligations I feel as a public trustee is that on the one hand we not dampen realistic opportunities for enterprise, but on the other hand I'm not very anxious to

see windfalls accruing to others than those who might — I'm just concerned that we don't expedite the making of millionaires by other than honest means, if I can put it that way.

This is code, quite frankly, for stranded debt, because there are some of these calculations that are absolutely critical. If you look at the Ministry of Finance paper on how this is going to be done, it begins with valuing the current assets that will be Genco and Servco. That's an absolutely critical calculation.

To its credit, the government has gone out and retained the services of Wood Gundy and Midland Walwyn and a variety of other experts to help in that valuation. But I certainly want to see more than I've seen to date as to how that process works because that's the first critical step. That valuation must be made. An assignment of a commercially bearable amount of debt must be made to Genco and Servco. Whatever is left over is going to be stranded debt, some of which will be residual stranded debt.

I guess my question to you is, thinking about Mississauga's broad base of residential electricity customers, what specific protections would you like to see that are not now in place, beyond the ones you've recommended, to make sure that the hundreds of thousands of residents in Mississauga don't get stuck in a situation where they carry a disproportionate share of that stranded debt and maybe are paying it in not particularly attractive or equitable ways?

Mr O'Brien: I think that's a good question and it gets to one of the very strong concerns that the city has. You made a very good point with respect to evaluating the two companies and starting off at the point of trying to assign debt to the point where they don't become uncompetitive.

The problem that we have with the stranded debt right now is we don't know what it is. Nobody can put a finger on it. Until such time as the nuclear costs are calculated, which will form probably a substantial part of that stranded debt that's being speculated right now at \$30 billion or 40 billion and perhaps more, I'm not sure we should be moving too quickly with respect to the assignment of the stranded debt until it's all there. That's part of the problem that we see, that it's not there yet. To try and move this thing to January really quickly, I'm not sure we should be rushing it in that vein. We should maybe sit back and say, "Let's really get all this debt."

That's one of the ways to ensure that you assign the stranded debt on day one on a proper, fair, all-in kind of basis and you don't come back two years later and say, "By the way, there's a little extra here that we've got to add on the pot."

130

Mr Conway: On page 3 of the brief, as I indicated, you argue that there be a mechanism in place to afford an opportunity for interested parties to review the calculations made by the Minister of Finance. As you will know from reading the bill, sections 79 and 81 — and those are to specific locations; I think there's at least one other where the bill contemplates — and I'll use the language: "the determination of the Minister of Finance that the

residual stranded debt has been retired is final and conclusive and shall not be stayed, varied or set aside by any court."

It's pretty clear that the Minister of Finance is going to have a very critical role here and as a politician, at one level, I don't object to that either, except I'm troubled in this particular case because the Minister of Finance is an umpire with an interest, because some of these determinations that he or she alone will make, once made, trigger benefits to the public treasury, of which the Minister of Finance is in charge.

A favourite and obvious example is that there's no doubt that this policy contemplates that, once in place, the Ontario government is going to, in the interest of a level playing field for taxation, take in perpetuity an annual slice of the multi-billion dollar rate base of the MEUs. In the first instance, that slice of the adjusted gross revenues will go to pay down the stranded debt. That I understand. But after that's done, at a time to be decided by the Minister of Finance alone, once that determination's made and the stranded debt is gone, that stream of money goes forever forward into the coffers of the Ontario government.

Mr O'Brien: You know, in 1949, I think it was, the federal government introduced something called the income tax and it's still there. It was put in place to pay for the war and we're still paying it.

Mr Conway: Is there a specific mechanism that you would recommend to keep the umpire honest to the interests of the electrical consumers?

Mr O'Brien: I would give the Ontario Energy Board the powers to intercede and to guarantee fairness and equity in that allocation.

Mr Wayne Lessard (Windsor-Riverside): I appreciate your suggestions with respect to exercising caution, as far as going into this without knowing what the stranded debt amount actually is. We've been told quite candidly by an expert, Dr Bryne Purchase, who was working on how the stranded debt should be calculated, that it doesn't matter what number you pick, it's going to be wrong.

We heard from the nuclear regulatory commission as well, who were quite concerned about the costs that need to be attributed to decommissioning of the nuclear power plants and disposal of nuclear waste. Although there is an estimate in the billions of dollars with respect to that, we don't know how accurate that amount is. There's no doubt that that will represent part of the stranded debt as well. I agree with you that before we know those amounts, determining what the stranded debt is and going ahead with this process is probably premature.

I think you probably answered this question about the Ontario Energy Board's involvement in the process of determining the stranded debt, but my question is, do you think that should be done by public hearings? Should the stakeholders actually have an opportunity to make representations before the Ontario Energy Board as to whether there's an amount that's been picked, what people think that amount is, how it was come to?

Mr O'Brien: Yes, I do.

Mr Lessard: You talked about the level playing field between what municipalities may be able to offer by way of services and what your competitors may be able to offer by way of services. This is a point that we've heard on a number of occasions. You mentioned in your brief about how some gas brokers have been offering free gasoline in order to attract customers for gas services. You'll be interested to note that one of the presenters yesterday in Sarnia was Sunoco, who made it very clear to us that they expect to get into the electricity marketing business as well. So they may be offering free gas to sell electricity also.

Is there any reason that you can see a justification for a competitor like that being able to offer those sorts of services when the municipal corporation may have some impediment to being able to compete on the same basis?

Mr O'Brien: I think you've hit on one of our key points and that is: Make the playing field level. Don't allow one part of the industry to have an advantage over the other. We don't, in the municipal sector. We don't generate power and we don't have the ability to go out and offer all kinds of incentives. My personal belief on this is that the residential user of electricity will have a hard time moving away from their MEU. There's sort of an affinity that's been established over the years. It's like I wouldn't want to buy my water from anybody other than my municipality. I don't want to get my hydro from anybody other than my MEU, but that's me as a homeowner, parent, a long-time user of electricity in a home.

The businesses approach it in a very different way. It's the bottom line: "How cheap can I buy my hydro, period. I don't care where I get it from." When you start plucking those things out of the system and saying, "Take them off and give them to a competitor," perhaps an American, then you suddenly disrupt the balance of rates that are being set across the board because you've pulled some really big stuff out of the game. That's what I'm afraid of. That's where, if the playing field isn't level, you add to that potential.

Mr Lessard: I have some concerns about privatization that you've kind of touched on in your submission as well. You've mentioned the half-billion dollar asset that the city of Mississauga is going to have. There are going to be some pressures to say, "This is some money that we can pick up here," and there will be some temptations that will be presented before council at some point in time.

Mr Conway: Hazel will stare them down.

The Chair: I'm going to have to interrupt. I'm sorry, our time's expired, Mr Lessard.

Thank you very much, Mr O'Brien, for coming before us as our first presenter this afternoon. I know we're going to have a number of interesting presentations here and we're glad you started us off.

Mrs Johns: Point of clarification, Madam Chair: In section 88, which is the repeal section on the two years, the intent of the government was to encourage amalgamations of municipal electric utilities. I just wanted to bring that intention forward.

PELHAM HYDRO-ELECTRIC COMMISSION

The Chair: Now calling representatives from Pelham Hydro-Electric Commission, the town of Pelham, please. Welcome.

Mr Brian Walker: Good afternoon, Madam Chair. Thank you very much for the opportunity to represent the Pelham Hydro-Electric Commission, and also the town of Pelham, at these hearings of the standing committee on resources development. My presentation today will be very brief because it's going to deal with one specific issue.

The Pelham Hydro-Electric Commission services 1,228 customers in the part of the town of Pelham which was formerly the village of Fonhill. The location is right in the heart of the Niagara Peninsula. Since the formation of the town in 1970 under the Regional Municipality of Niagara Act, the commission, in conjunction with the town, has examined several times the feasibility of the expansion of the service area to include part or all of the areas within the municipal boundaries.

In 1995, the commission purchased data from Ontario Hydro which dealt with a partial expansion and which indicated that such an expansion was feasible. Because of the continuing litigation proceedings faced by our neighbouring utility in Lincoln, a decision was made to delay application for an expansion.

In December 1997, at the first meeting of the new commission, a decision was made to begin the proceedings necessary under the Power Corporation Act to expand the service area to include the whole of the municipal boundaries of the town of Pelham. This expansion will service approximately 4,500 additional customers. I am not going to go through the details of the proceedings but I have included them as an appendix to my written submission. I'd like to stress that our commission has acted in good faith throughout these proceedings to expedite the matter.

On May 20, 1998, the town of Pelham published a notice in the local newspaper advertising a public meeting to be held on June 10, 1998. Because our courier service in Toronto did not meet its time commitment of personal delivery of the notice to the secretary of Ontario Hydro, the town had to publish a notice on May 27, rescheduling the public meeting to June 17, 1998.

1340

Since no objections were expressed at the public meeting, council decided to place the expansion bylaw on the agenda of the June 22, 1998, meeting. At that meeting the bylaw was given three readings and passed. During the subsequent appeal period, no objection was filed by either Ontario Hydro or the Power Workers' Union.

Expansion of our service area is in accordance with the Macdonald commission's recommendation for the creation of shoulder-to-shoulder utilities. It would allow us to pursue mergers, amalgamations and sharing or purchasing of services from neighbouring utilities in Lincoln, West Lincoln, Thorold and Welland. We recognize that the status quo will not be a viable option for us under the Energy Competition Act.

This is where our problem occurs. Schedule D of the newly introduced Energy Competition Act, subsection 28(2), states:

"Bylaws passed by a municipal corporation under Section 83.2 of the Power Corporation Act on or after the day the Energy Competition Act, 1998 receives first reading in the assembly are deemed to be void as of the day Section 83.2 of the Power Corporation Act is repealed."

It is our contention that this section, if passed, would be punitive in our situation. We proceeded in good faith under the appropriate act and the town of Pelham passed a bylaw which is in the best interests of its ratepayers and of the hydroelectric customers of the whole town. The repeal provisions of Bill 35 would prevent the expansion of the Pelham hydro service area. Customers in the expanded area have responded enthusiastically to the proposed expansion and certainly do not want to see it stopped by the provincial government.

We would therefore request that the expansion of the Pelham hydro service area be allowed to proceed to completion under the Power Corporation Act and that the repeal provisions of the Energy Competition Act not apply in regard to the town of Pelham bylaw 2013 (1998).

I thank you for your consideration of this brief and would welcome any questions you may have.

The Chair: Thank you very much. We have seven minutes for questions from each caucus, beginning with the Liberal caucus.

Mr Conway: Thank you, Mr Walker. Does my memory serve me correctly? Were you around for the 185 business four years ago?

Mr Walker: Yes, I was.

Mr Conway: Lincoln is, of course, where it came a cropper, as we say. It didn't quite work out as advertised. I take it that when your group at Pelham met after the election in 1997, I guess it was, that first meeting of newly appointed commissioners, you anticipated that you would ultimately see a region-wide distribution system municipally owned and controlled in the entire Lincoln area.

Mr Walker: We saw that there would be mergers or amalgamations, not necessarily region-wide, but that there would be three or four utilities over the next year or two.

Mr Conway: But you will agree that Macdonald, in his recommendation two and a half years ago, indicated at given the burdens that the new marketplace was going to impose on LDCs, there was going to be some requirement that we probably look at county-wide, region-wide and city-wide, but particularly county- or region- or strict-wide utilities. Certainly people were aware of that.

Mr Walker: That is correct, yes. The problem that we have is that we're like the hole in the middle of a doughnut in that the service area is only the former village of Fontenille, so we're surrounded on all sides by Ontario Hydro.

Mr Conway: That was going to be my next question. Can you just tell the committee whether, for example, Pittingham would be part of your service area or would it be part of Pelham Hydro?

Mr Walker: No, that would be Ontario Hydro.

Mr Conway: So there's a lot of Ontario Hydro Retail all through your —

Mr Walker: Yes, all of the subdivisions which have occurred in the town of Pelham since 1974 are under Ontario Hydro areas.

Mr Conway: We've heard this point at least two or three times in the last week, and I can't remember who or where, but the relief to the point you make in the second paragraph of page 2 would be what, the specific relief? It's subsection 28(2) of schedule D that is the problem, because the bill was introduced on June 9 and your first meeting was not scheduled, or your bylaw — well, it's irrelevant. The bill was introduced before you got to it. What is the relief required? Strike that section? Amend that section?

Mr Walker: We would like to be able to proceed under the act under which the proceedings began in December, because we were 90% complete when Bill 35 was given first reading.

Mr Conway: Can you tell me, at least, because I was there for the 185 debate — and I must say I've been personally annoyed, to use a very neutral phrase, at what has not happened in three or four years on the part of all kinds of players who beat their little breasts and said, "Of course all goodness will follow," and it hasn't. I'm a bit skeptical because we were all onside and nothing much seemed to happen except a lot of very active court activity and litigation. From where you sit, what was the problem down there in Lincoln to frustrate the unanimity of purpose underlining Bill 185, which had as its basic commitment the rationalizing of franchise areas between MEUs and other players?

Mr Walker: The problem in our area was resistance by Ontario Hydro to allow Lincoln Hydro to expand its municipal boundaries. Then of course subsequently there were the objections filed by the Power Workers' Union.

You must understand that our commission only has two employees. That's why I came here myself today; we didn't want to close the office. We looked at it at the time and we were aware of the kind of legal bills that were facing Lincoln Hydro, so we said, "We'll just wait until there's some progress towards resolution of that conflict," and obviously it became evident that there was going to be a resolution in the spring.

Mr Conway: The way this debate is unfolding, it seems to me that in an area like Lincoln we're going to get rationalization all right, but it's going to be a large LDC that is essentially Ontario Hydro Retail, because we had a number of submissions that make me believe that there are a number of instruments that militate against anything else happening, including subsection 28(2), to which you make reference on page 2. Do you think that's just an unfounded instinct on my part or do you see anything currently in the behaviour of Ontario Hydro Retail that would make you conclude that they're anxious to expand and consolidate their retail function, particularly in an area like Lincoln county, or what used to be Lincoln county, by consolidating and eating up, to use a phrase that's been used before, local smaller MEUs?

Mr Walker: Effective July 1 past, Lincoln Hydro expanded its boundaries. Effective next June, West Lincoln will expand its boundaries. The only areas that will be left in the regional municipality of Niagara that are serviced by Ontario Hydro will be part of Pelham and the rural township of Wainfleet. They will be the only ones left. Dunnville, Nanticoke, Haldimand are all going to municipal utilities. There may be further consolidation after that. One of the things we're worried about now is that the closest centre for Ontario Hydro to service customers in the town of Pelham will probably be Simcoe.

Mr Conway: But the expectation of most in the committee, I think, is that in an area like old Lincoln county you're going to have fewer LDCs. You're going to have to have a rationalization. I think we all understand that. Macdonald was very clear as to why that should happen, because of the new obligations of the new marketplace. I'm trying to imagine what you've got down there and it doesn't strike me that it's going to be impossible for Ontario Hydro Retail to pick you off one at a time, saying: "Dunnville is too small, West Lincoln is too small and Lincoln is too small, and we can effectively frustrate their coming together. There's only one other possibility: We buy them out, play the Bell Canada role."

Mr Walker: That is a possibility. I think in terms of what Pelham Hydro would like to do, expanding our boundaries would allow us to then proceed to the next stage which would be either mergers or amalgamations. We've had talks with Lincoln and West Lincoln Hydro going back for a number of years. In fact, one of them was with Ms Elliott back in 1995. We've also been exploring very actively service sharing with Thorold Hydro. We recognize that we're not going to survive as a utility of 1,228 customers. We're going to be into a much larger scenario.

Mr Conway: Thank you very much, Mr Walker. I very much appreciate your testimony.

1350

Mr Lessard: I guess you answered my first question with that last answer, because I wanted to ask you a little bit about the economies of scale. That's probably the single most important factor for wanting to expand your service boundaries. I would take it, in that the introduction of subsection 28(2) in schedule D is really going to frustrate those efforts and any benefits that you may be able to achieve. Did you have any indication whatsoever that this section was going to be included in the bill?

Mr Walker: No, I did not.

Mr Lessard: I suppose you would take it as odd, considering how far down the road you had gone through this process, followed all the steps that you were supposed to, that you wouldn't even get any notification, any hint whatsoever that this might be a possibility.

Mr Walker: It has been frustrating because we are so close to the realization of the project that with two weeks' difference —

Mr Lessard: I suppose the arguments about the economies of scale would be the same for Ontario Hydro as well. If they were only able to service this small

number of customers you're talking about, they would have to service them from a distance as well, if that were the only area they were serving.

We've heard as well during our committee hearings some frustration with dealing with Ontario Hydro, especially the billing changes and the 1-800 number that was to be called for people to have the new billing changes explained. Have you heard any of those complaints about Ontario Hydro's service in your area?

Mr Walker: Our staff receive many calls because people sometimes aren't aware of whether they're Ontario Hydro or Pelham Hydro customers, even though it indicates on their bill where their money is going to be sent. We have a lot of calls. Our director of operations for the town of Pelham approached me last week and said one of the people who had called in had a tree limb on the service line going into the house. They called Ontario Hydro and Ontario Hydro said: "Sorry, we no longer have a forestry crew in this area. Call the town of Pelham." It is very frustrating and I think a lot of people are getting to the point where they're calling Mr Sheehan, the member for Lincoln, to express their frustration.

Mr Lessard: That sounds like a good suggestion.

Have you had any discussions with Ontario Hydro about the price of the assets for the expanded service area, if in fact you were ever able to get through this process?

Mr Walker: I attended a meeting at the MEA in late July and Mr Vipin Suri from Ontario Hydro was present. He stated at that time that they were willing to enter into transfer agreements with the 20 utilities which had passed the bylaw. So I wrote him a letter when I got back to our office and asked him if he'd also send us a copy of the transfer agreement. That was about three weeks ago and I haven't heard from him yet.

Mr Lessard: Even if you were able to get some relief from this section and be able to proceed along the course that you wanted to, you'd still have to negotiate with Ontario Hydro with respect to the price.

Mr Walker: Yes.

Mr Lessard: We've also heard concerns from people about the frustration in those negotiations about the price of the assets. I know Mr Gilchrist has had many discussions with presenters about what the value of those assets should be. Is that something you have given any consideration to, if you were able to continue and be able to acquire those assets?

Mr Walker: The study that was done by our consultant indicated a price that would be approximately \$7 million, based on the computer models they used etc. It showed that was a feasible amount for us to pay in order to make this a viable utility.

Personally, I have some difficulty even with residual value because in our town we have a lot of new subdivisions that have expanded a great deal in the last 25 years. In all of those subdivisions the hydro plant was paid for by the developer and ultimately the lot owner and then turned over to Ontario Hydro. So now we're going to have to buy back plant that was already paid for.

People in the rural area who are third or fourth generation on those farms think they've probably paid for the line down their road as well.

Mr Conway: They have.

Mr Lessard: They have paid for that and it would be unfair, I would think, if they were to insist on that price. They may be able to frustrate your intentions even if you were to get the relief you've asked for from here, from this section. If you don't get that relief, if this section isn't repealed or amended to grandfather your particular situation, what do you see ultimately as the result in Pelham and the surrounding area?

Mr Walker: I've heard a phrase used about commercial or market value. I've never seen a definition of how that is derived, but in our neighbouring utility of Lincoln, which has a residual value of about between \$8 million and \$9 million, the figure that was banded about as the commercial and market value was \$26 million. That would make the expansion unfeasible. The debt load would be too high for the number of customers in the utility.

Mr Lessard: Maybe I'll give Mr Gilchrist an opportunity to further debate this asset valuation.

Mr Gilchrist: Very kind of you. Thank you, Mr Walker, for coming before us. We've certainly heard from quite a number of MEUs on both matters, both the one to which Mr Lessard has alluded and the issue of the cut-off date of June 9.

This isn't a cross-examination, but there was sort of a set-up question given from our colleagues opposite: Did you know this section of the bill was in there? I guess I could similarly ask you, how many copies of bills in the last did the Liberals or NDP share with you before bills were tabled in the Legislature? Would the answer be one?

Mr Conway: I can think of a few.

Mr Gilchrist: No, shared with Mr Walker. The question was to Mr Walker. How many governments have shared copies of bills?

Mr Walker: I've only been the chair for this past year, Mr Gilchrist.

Mr Gilchrist: Fair enough, OK. But take it as a given that for some fairly obvious reasons, while governments talk about the direction they're heading in, you don't normally print the bill somewhere before you table it. It would be incredibly disrespectful to the opposition; I'm sure we'd hear about it.

But more to the point, is it fair to say that Pelham knew the direction the government was heading in and that you have been well aware of the various white papers and the various commissions that have been heading down this road?

Mr Walker: Yes, especially with the Macdonald Commission, Mr Gilchrist.

Mr Gilchrist: OK. Not a lot turns on that, but would you agree with us as well that, leaving aside the specifics of this clause, when the government makes a change in direction, whether it's something that affects insurance companies or retail companies, whatever it is, it is not

unusual and it is not inappropriate to fix a date so that there is no last-minute profiteering, recognizing that there's a time period between when a bill is introduced and when it gets passed? It wouldn't be inappropriate for a government to sort of set a line in the sand and say, "What people were doing in good faith before we told about our change in direction is one thing." What they've done since the bill's introduced, I think they take great risk if they —

Mr Walker: Yes, I would think that any utility that commenced the process after June 9 is in a different situation than we were.

Mr Gilchrist: Let's come to that point, because in your presentation you talk about — I think you said you had gone through this process three times since 1970. What was different this time?

Mr Walker: One of the things that made it more attractive at this time, as compared to previous studies that we had done, was the cost of borrowing. The previous studies we had seen were looking at borrowing money at 12% and 13% and this study indicates a borrowing rate of between 6% and 7%. That is just enough in the size of our utility, Mr Gilchrist, to make it financially viable.

Mr Gilchrist: Fair enough, and that's certainly a compelling reason for businesses all across Ontario to have made the expansions they have in the last few years.

If Hydro were to sell you an asset, whatever that asset is, if it got \$10,000, it can put all that money against the debt. If it sells it for \$5,000, obviously there's \$5,000 more in stranded debt at the end of the day. Would you agree with that?

Mr Walker: Correct.

Mr Gilchrist: So to a very great extent you can appreciate that our dilemma here is that we are all the taxpayers, and yes, with over 99% of the province wired, we're all ratepayers to some extent; it's a question of which pocket do we put funds into. One of the reasons that June 9 was chosen is that Hydro's direction from the previous government to sell things at book does not necessarily reflect the income-generating value of that asset. If you were going out and buying any other asset, you would expect to pay the going rate, you would expect to pay what everyone else in the market pays, would you not? If it was for a car or a truck, that sort of thing, that sort of asset?

Mr Walker: Yes.

1400

Mr Gilchrist: The dilemma is not so much the Pelham case; Pelham by itself would not change the math significantly. But looking at all the MEUs that have in some cases started the process beforehand, and in some cases not started the process beforehand, or started it about that same week, if you add all of those up and, quite frankly, if you make an exception for them, where do you then draw the next line? Obviously we are talking, in aggregate, an awful lot of dollars, and the difference between the book value and the market value of those assets would ensure that all of us as taxpayers wind up keeping more stranded debt than paying for that some other way.

You heard the presentation from Mississauga beforehand and their concern about stranded debt. Would you

agree with me that if deals were cut to lower the selling price of assets, the MEUs, who continue to purchase their power from Hydro, or wherever, would pay a stranded debt charge to compensate for that?

Mr Walker: Yes.

Mr Gilchrist: So your customers, ironically, might not benefit at all by getting the deal that — again, taking Pelham and extrapolating that to all the MEUs that are making this application, in aggregate, if they get a break on one hand, they're going to wind up paying more for the actual cost of the hydro you buy from Ontario Hydro. Is that not true?

Mr Walker: In our case, substantially so, yes.

Mr Gilchrist: I think that really becomes the nub of the problem here. In your presentation, and I really don't think you meant to leave this impression, the section you quoted would "prevent" the expansion of Pelham Hydro. I think you mean it would prevent it at book value acquisition price, because there is nothing in this bill that prevents you from going to Ontario Hydro and offering to sit down and negotiate a purchase price. It would allow you to go shoulder to shoulder with the other four utilities you quote.

Mr Walker: Except that if I tell my ratepayers, "Your kilowatt hour is no longer 8.9¢, but it's going to be 11¢," they're not going to be too impressed.

Mr Gilchrist: But you're assuming a certain price is the result of those negotiations. Are you aware that the OEB is prepared and has the powers to be an arbitrator?

Mr Walker: I am.

Mr Gilchrist: OK, because we've seen recently the sale in Cornwall of the PUC down there. It was bought by Consumers' Gas, and the purchase price was less than \$3,000 per household.

We heard some numbers from the Sudbury and other northern PUCs that suggested that Hydro was somehow expecting to get \$5,000 per household. I would submit to you that the most up-to-date example is a price far less than that, and I think the OEB would take direction from facts rather than from speculation. If that was the ballpark, roughly the \$2,000 to \$3,000 range, which is the difference between what the MEUs would like to pay and what Cornwall got for theirs, that's not all that great a differential, wouldn't you agree? Certainly, it would be something worthy of at least entering into negotiations, because you might wind up seeing it a lot closer to \$2,000 than to \$3,000.

Would you necessarily stop the process or would you agree with me in at least pursuing it to the OEB if all else fails?

Mr Walker: You would have to look at the numbers. The numbers are based on about \$1,650 per household. That's what you'd have to do. Before you'd ever get a price from Ontario Hydro, you'd have to use a computer-based figure, and \$1,650 was used in our case.

Mr Gilchrist: All right. Would you agree with me as well that in all of this process we share the goal of finding those consolidations and amalgamations so that the MEUs can compete on a more level playing field with Hydro and

anyone else that comes into the market in the future? You made the concession that \$1,200 isn't good enough. I'm not asking you to pick a number that is the appropriate number, but in general terms would you agree with the general manager of North Bay, who said that the number of MEUs is an anachronism and that we need amalgamations?

Mr Walker: I agree with that.

Mr Gilchrist: OK, because — here's the zinger — looking at the Cornwall example, is Pelham prepared to sell its assets at any time in the future on the same basis that you are offering to buy them from Hydro? If you buy them at book value, are you prepared — leave any market differential on the backs of all Ontario taxpayers — to be bound the same way if you were to sell your assets to Lincoln, if they wound up being the dominant partner and instead of a merger it became an acquisition?

Mr Walker: I can't answer on behalf of the commission, Mr Gilchrist. We haven't discussed that matter.

Mr Gilchrist: Will you agree with me that that would be the only fair way to do it? Or is the result that a windfall would occur for the folks in Pelham that quite frankly has been paid for by the taxpayers from all across Ontario, namely, for the Ontario Hydro assets?

Mr Walker: I don't think the residual value of \$7 million is a windfall, based on the circumstances within our municipality. When you have a substantial number in an expanded area having already been paid for by the developer and, subsequently, the lot owner and then just turn it over to Ontario Hydro, I think \$7 million is quite a generous figure.

Mr Gilchrist: But that presupposes that once money goes into Hydro, it goes into a little bucket that specifically pays for that pole or that wire. You and I are all paying 40 cents on every dollar just towards the debt service for past mistakes, and all the funds they get, as all the funds you get, are aggregated. It goes into one bank account and when a customer pays you their monthly bill, that doesn't specifically go to cover their wire, their pole. You'd agree with me on that?

Mr Walker: Definitely.

Mr Gilchrist: It covers the cost of the general manager and a whole bunch of other things.

The Chair: Time to wrap up.

Mr Gilchrist: OK, very quickly. So Hydro, having received X number of dollars, I accept may or may not correlate to certain expenditures, but there is no tracking that way, and you'd agree with me that we all have an obligation to retire that Hydro debt and if we don't do it one way, we're going to do it another.

Mr Walker: Right.

Mr Gilchrist: I would hope, worst-case scenario, if this does have to go to the OEB, that as long as you're able to tell the folks in your town that every dollar that goes to retiring more of the stranded debt lowers the cost of the hydro you buy, may actually not change the price equation at all.

Mr Walker: They've all been privy to the figures that were done by the consultants and that's why so few people

showed up at the public meeting and none of them objected. We're looking at a situation where the house taxes in our town are up \$250. If we can save the people \$100 on their energy bill, they'd appreciate it.

Mr Gilchrist: Perhaps just as a final point if I could just ask the question, because he said he couldn't bind the commission —

The Chair: Five, four, three —

Mr Gilchrist: Perhaps you could get back to us and ask the commission the question that I posed to you and send their response back to us, because I think that would be very enlightening to us.

The Chair: Mr Walker, thank you very much for coming before the committee with the story of your particular utility. We'll take this under serious consideration.

HYDRO MISSISSAUGA

The Chair: Now calling upon representatives of Hydro Mississauga, please. Good afternoon, Mr Wahl, and welcome.

Mr Karl Wahl: Thank you, Madam Chair. My name is Karl Wahl. I'm the general manager of Hydro Mississauga.

Bill 35 is, overall, an excellent move forward for Ontario, balancing the need to protect Ontario's investment in Ontario Hydro while seeking to provide the best mix of price and service to customers. However, Bill 35, as drafted, appears in some sections to be inconsistent with the principles of fair competition and of assuring customers stable or decreasing prices. Further focus upon these principles, combined with flexibility regarding the implementation of retail competition, will achieve these important policy objectives.

By way of background, Hydro Mississauga is the second-largest distribution and retail electric utility in Ontario. We have the lowest rates of the major GTA utilities, and of each dollar paid by the customer for electricity, only 7.5 cents go to Hydro Mississauga and the rest goes to our supplier, Ontario Hydro. We have a margin close to the lowest in the province. We have equity of \$428 million with no debt, and we have a world-class, highly reliable system.

We believe Hydro Mississauga is the most effective and efficient distribution and retail utility in the province. In the distribution operation, our Wiresco business, will continue to operate well as a regulated monopoly. Our retail business operation, our Servco, is ready to compete the competition will be fair.

Hydro Mississauga believes that there are two major aspects of the proposed legislation that require further thought and refinement in order to ensure both lower rates and well-served customers. These two major aspects include, first, ensuring fair competition between all competitors in the retail services at both the provincial and local levels, while preserving the value of the MEU; and, second, considering how competition in generation may affect the retail market.

1410

Bill 35 will require the segregation of MEU retail activities into a new competitive company. This company must compete against established, out-of-jurisdiction competitors who are already moving into Ontario. The objective of these competitors is clear: to capture all of the retail business and potential profit associated with retail activities in a competitive marketplace.

Failure to provide the new MEU Servco a reasonable opportunity to organize a client base and consolidate its operations will create a weak operation. In contrast, these retail competitors will enjoy major competitive advantages as we move towards the year 2000. First, they will have developed expertise from other jurisdictions proceeding now with wholesale and retail competition. Second, unconstrained by present laws that restrict MEUs to geographic service areas, or historical boundaries, if you will, they will have been marketing across Ontario and elsewhere. Third, they will cherry-pick prime customers leading up to the year 2000, thereby focusing resources and improving competitive position.

These competitors also enjoy other advantages. Relative to MEU retail companies, competitors are very large, offer a variety of services, and are well financed.

If Bill 35 permits a competitive imbalance, large predators, mostly American, will absorb the Ontario retail market. The financial markets will recognize this likelihood, thus constraining financing opportunities for MEU Servcos. The established public interest in MEU Servcos will diminish as the operations struggle to establish the client base and revenue stream necessary to compete.

We have all recognized the importance of the public investment in Ontario Hydro and enabling the successors of that corporation a fair chance to compete. The same importance attaches to the public investment in MEUs, including MEU retail activities.

Hydro Mississauga agrees that MEUs should consolidate — we've been a proponent of that for a long time — to continue to achieve greater efficiencies and serve customers well, both in distribution and retail activities. We believe, however, the public investment in Servcos should not be lightly discarded. As presently drafted, Bill 35 runs the risk of losing all of the Ontario public investment in MEU Servcos, thereby enabling out-of-province competitors to take advantage of this important area of business.

We have a number of specific recommendations that we believe will help to achieve fair competition in retail services. In each case I will describe the issue and then summarize with our specific recommendation.

Our first point relates to preserving the MEU Servco value. Bill 35 contemplates that Wiresco and Servco services will be segregated and contracts between MEUs and customers will be terminated. Subsection 28(1) of the Electricity Act contemplates that the Wiresco will act as the default service provider, whereby customers who do not sign up with other retailers will default to Wiresco. Wiresco will be obligated to provide this service.

Unlike the Wiresco operation, there is no clear mechanism to enable the new Servco to quickly establish a

client base and an associated revenue stream. The second report of the Market Design Committee suggests that Wiresco be prohibited from assisting Servco in any transfer of clients or even preferential recommendations. If this proposal is followed and Servco does not receive the initial transfer of customers in year 2000-01, Servco will not have any significant resources from which to build a new customer base. As a result, there is no business certainty upon which to borrow, grow or compete.

The MDC is debating whether customer contracts should be transferred to Servco on the first day of competition. There is a recognition that without such a transfer Servco will be at a serious competitive disadvantage. The end result is that without a clear transfer of customers to Servco on the first day of open retail competition, any value associated with the retail element of an MEU will be significantly diminished and in fact might be lost. MEU value, jobs, in-Ontario investment, taxes and future debt reduction payments through transfer taxes will be lost or diminished unnecessarily.

If Servco is provided with this initial customer base, there is a question as to whether customers will receive the best mix of price and service. Hydro Mississauga is confident that competition will swiftly eliminate unreasonable prices or poor service.

Our recommendation is that section 28(1) of the Electricity Act should be amended so that contracts with existing MEU customers should be initially assigned to MEU competitive affiliates. After the initial transfer, the Wiresco may still act as the default supplier. Where an MEU does not form a competitive affiliate, the MEU should be able to assign its retail contracts to another MEU competitive affiliate for value.

Our next issue is enabling MEU Servcos to compete. Section 72 of the Ontario Energy Board Act, the OEBA, significantly constrains the types of for-profit businesses that an affiliate of the distribution company can engage in. Business activities of an affiliate may be owning or operating authorized generation facilities, retailing electricity, activities to assist in the retailing of electricity, activities to assist in the distribution of electricity or activities primarily for the purpose of more effectively using the assets of the distributor's distribution system. The private sector competitors have no such constraints.

Section 72's apparent concern to protect Wiresco from high-risk activities is adequately addressed through a separate incorporation, limited liability and sections such as OEBA 69(2)(f), which enables the Ontario Energy Board to prohibit cross-subsidization and risk spreading.

Our recommendation to this is that section 72 of the OEBA, which places constraints on competitive affiliates, is anti-competitive and unnecessary. This section should be abandoned or deleted as it applies to a competitive affiliate.

Our next point is to ask for limits to Ontario Hydro Servco's unfair advantages. The new Ontario Hydro Servco will have in excess of a million customers. Based upon experience in other jurisdictions, a million customers is the approximate critical point or critical mass to achieve

significant cost-efficiencies. Ontario Hydro Servco has also had the historical opportunity to develop the necessary large-scale infrastructure from which to compete throughout the province.

Toronto Hydro with 650,000 customers and Hydro Mississauga with 150,000 customers are the next-largest retailers in the province. It will be extremely difficult for retailers to compete against the new Ontario Hydro Servco given its dominant position in the marketplace. MEU retailers have been constrained by law to developing limited infrastructure which meets local needs only.

Section 47 of the Electricity Act contemplates that Ontario Hydro Servco can, through its subsidiaries, include both retail and wires. Similarly, there is no requirement that Ontario Hydro Servco's transmission and distribution functions be placed in separate subsidiaries, and that's an important point. There is no separation between transmission and distribution as proposed by the act. This is inconsistent with the expectation that MEUs will completely segregate these functions. Transparency is thereby lost.

The Municipal Electric Association, recognizing the dominant position of Ontario Hydro Servco, has recommended that the Ontario Hydro Servco should have a mandate to entirely divest itself of its business through rationalizations with local utilities by November 6, 2002.

Our recommendation is that Ontario Hydro Servco should be completely segregated into three separate organizations, based upon the distinct operations of retail, transmission and distribution. Objective and transparent firewalls should be immediately and now established and publicly reviewed by the OEB in 1999, before competition begins. There should be a yearly OEB review of the effectiveness of the firewalls until such time as the OEB determines that no further review is required.

Next, we believe that private sector contracts should be placed on a level playing field. Energy brokers are already enticing customers with various contracts, including retail services in the year 2000. A variety of questionable practices and promises have also been reported.

It is not in the customer's interest to permit brokers to offer binding contracts for services until the legislation and market rules are known and in force. This also provides a competitive advantage which is unfair to MEUs, whose contracts will be terminated in the year 2000 under section 25 of the Electricity Act.

Our recommendation is that section 25 of the Electricity Act, which terminates contracts between MEUs and customers, should be amended to terminate all wholesale and retail contracts in the year 2000, including contracts with energy brokers and other energy service suppliers.

1420

We have three recommendations that relate to eliminating unfair tax penalties.

The first concerns transfer taxes. The proposed transfer tax contained in section 88 of the Electricity Act is detrimental. The two-year window before this tax takes effect promotes a premature sell-off of assets. A good portion of the value in the utility will be lost to the transfer tax once

it is implemented. This will likely result in higher electricity prices as a means of recovering the lost value. Mr O'Brien spoke to that earlier. It is only natural that a seller or buyer of a utility will seek to pass on to the customers of the utility any exceptional costs.

Our recommendation is to eliminate undue time constraints on potential MEU divestitures. Section 88 of the Electricity Act, transfer taxes, should be eliminated. Intermunicipality transfers and one-time disposition of the MEU assets to the private sector should be exempt from this tax.

Next is the proposed property taxes. Property taxes are not a fair or logical source of funding for stranded debt. Property taxes create a provincial-municipal jurisdictional problem. Such taxes require the splitting of proceeds between two parties, one of which is being told what they will get and the other setting the rate and keeping the difference. Municipalities will be affected to greater or lesser degrees through sheer luck as this situation is wholly dependent on where Ontario Hydro facilities are located.

Our recommendation is that, given their unique jurisdictional nature, property taxes paid by any entity should not be used as a vehicle for servicing or reducing stranded debt.

The third issue is that of corporate taxes. Payments in lieu of corporate taxes, section 87 of the EA, meet the government's goal of levelling the playing field on taxation. This tax will be in line with taxes paid by private enterprises and will carry on indefinitely. This tax will be calculated as a percentage of gross revenue which should make it easy to administer and build into the rate-setting process. Hydro Mississauga supports this approach to taxation. We do think there should be a sunset clause, though, and cease the taxation once the stranded debt is paid off.

The primary issue with this tax is that it will create an immediate increase in electricity rates that can only be offset by a corresponding decrease in the cost of generation. The province should have evidence of decreasing generation costs before implementing new taxes.

Our recommendation is that corporate taxes as contemplated in section 87 of the EA should not be imposed until there has been a demonstrated decrease in the cost of generation. This is a critical point, in my opinion. There's a big assumption that the cost of generation is going to come down and that therefore we'll be able to pay these taxes, but we have no evidence that's actually going to happen. The legislation should provide express power to the minister to defer retail competition until generation savings have been established.

Another key concern to Hydro Mississauga is the management of the impact of Ontario Hydro nuclear operations on debt allocation and new investments. Generation is the major cause of Ontario Hydro's existing debt. Until the nuclear asset optimization plan, NAOP, is completed, there is no ability to assess nuclear performance. NAOP has fallen behind schedule by approximately eight to ten months by some estimates.

It will still be a few more years before the results of this asset optimization plan can be assessed. Until nuclear

performance can be assessed with confidence it is impossible to attribute debt. Thus any attribution of debt in the interim is an educated guess at best. If you attribute too little debt to Ontario Hydro Genco, it will control the generation market for years, and if you attribute too much debt, Genco cannot survive. Either scenario will force the government to intervene in the marketplace to shift more debt to or from Genco.

Some gas-based generation will be in the range of four to six cents per kilowatt hour and other generation will cost more. It is clear that nuclear power, if NAOP is successful, will dominate and perhaps undermine the entire generation marketplace until and unless debt is fairly allocated to Genco in such a way as to level this major competitive advantage. The problem, though, is that while Ontario Hydro Nuclear is confident in its expectations for nuclear performance, no one truly knows how the nuclear units will perform, given the historical lack of reliability.

Until these variables are known, significant investment in Ontario in the generation sector cannot be undertaken. The marketplace needs finality once the debt is attributed. Market players and customers should not assume any risk for an error in debt allocation or Genco's ability to effectively manage nuclear performance.

Our recommendation is that legislation mechanisms should be implemented through Bill 35, which addresses Ontario Hydro debt imbalance scenarios. Marketplace participants and customers should not be at any risk for the implications of any future debt reallocation or adjustment.

Our final recommendation relates to the impact of generation on electricity prices. Generation is the primary component of electricity prices. It is critical to ensure efficiencies in this area.

There is a risk that if competitive market-based pricing in generation is not functioning well, the new taxes and other burdens contemplated in Bill 35 will only result in an increased price to the customer, because overall efficiencies have yet to be achieved. The efficiencies that can be achieved at the MEU Wiresco or Servco level are very small in comparison to generation. Such efficiencies will not always offset new costs for taxes, the increased regulatory burden and related matters. For example, of each dollar paid by Mississauga customers for electricity, only 7.5 cents go to Hydro Mississauga. Realistic reductions in this cost are highly limited and pale in comparison to the cost reductions which can be achieved at the generation and transmission level.

Our recommendation is that a flexible approach to restructuring the marketplace should be incorporated to reduce the risk of increased prices to customers. We're afraid that the prices are going to go up. New costs such as taxes should not be assigned to the retail sector until such time as generation efficiency and related price reduction is clearly established. Legislative mechanisms should be implemented to enable the minister or the OEB to make this determination in the year 2000.

In conclusion, open competition in electricity services will be good for Ontario. The inefficiencies of the existing generation, transmission and distribution systems will, over time, be reduced or eliminated. We will all benefit.

In the move to competition, the province should recognize that the ability to achieve efficiencies in generation and the proper assignment of debt to generation are the two most important and unknown variables. Success in transmission and distribution services and retail competition cannot offset major errors or mistakes in generation or debt assignment. I'll stop with that, Madam Chair.

The Chair: Thank you. We have three minutes for questions from each caucus, and we begin with the government caucus.

Mr Johns: I want to follow two trains of thought, so I'm going to have to be really quick on the first one. It seems to me that both you and the city manager have talked about an apprehension about competition in Hydro Mississauga or your ability to compete as other private sector people come in. It seems to me, knowing you, that your Hydro Mississauga has good management, it has efficiencies that are incredible and it's pretty visionary in some of the things I have seen from you. If anyone is poised to compete in this new market, it would be Hydro Mississauga. I guess from my standpoint, when I go out and talk to people all across the country, if there are going to be 30, 40, 50 municipal electric utilities left, I always say that Hydro Mississauga is going to be there. Do you believe that also?

Mr Wahl: I sure do.

Mr Johns: So you're getting ready to eat as opposed to being eaten?

Mr Wahl: Correct.

1430

Mr Gilchrist: Thank you, Mr Wahl. I appreciate your presentation today and your help to the government by the MDC in all this. It's very important to us.

I would like to address very quickly, because we only have a second here, you're concerned about generation and state, "Until these variables are known, significant investment in Ontario in the generation sector cannot be undertaken." We were just in Sarnia yesterday and heard about two projects already announced, \$500 million yielding 620 megawatts. The head of the chamber of commerce told us there are other projects that are on the drawing boards totalling over \$1 billion in Sarnia alone, and the minister is confident we're going to see, in the relatively short term, \$10 billion to \$11 billion worth of new investment, so I think your concerns might be unfounded there.

But let me ask you a very pointed question. What's the magic at Etobicoke Creek that you can deliver electricity for 7.5 cents markup but it takes Toronto almost 25 cents? What's more expensive about delivering electricity in Etobicoke than it is here in Mississauga?

Mr Wahl: Some of it might be that the age of our system is a little younger and is not as congested, but overall I would say when we have looked at some of those

situations, I think it's just a good management team and a good attitude of trying hard to be the best we can.

Mr Gilchrist: It's my understanding you have incentives for your staff and in fact you're expanding on those?

Mr Wahl: How did you find out? I just announced it this morning. I had two town halls with my people to announce that we are introducing an incentive program — we think that's the next level of incentive for our people — where we will pay from 2.5% up to 10% of their base annual wages for savings, productivity improvements, reliability, increase in safety and increased customer service. Those are the fundamentals of our incentive plan, and we're quite excited about that. We think it's a first in the industry actually.

Mr Gilchrist: As a Toronto ratepayer, I'm looking forward to Toronto stealing your good ideas and lowering that price by that 18%.

Mr Wahl: In our Servco, Mr Gilchrist, we'll have those things for sale.

Mr Gilchrist: Excellent. Sign me up.

Mr Conway: Mr Wahl, thank you for a very helpful and specific presentation. You are well known in this industry as a very successful and creative manager. From my point of view, the policy that we're here to debate today in two of its fundamentals is absolutely right: competition in generation and a more transparent and rigorous regulation of the entire electricity marketplace. I think those are two objectives that are right and proper.

Of course a broad base of the public, to the extent they're paying any attention at all, would reasonably conclude that we're doing this to escape from some of the unintended burdens of past electricity policy and also to deliver lower rates. My own belief is that down the road, with new technology and new attitudes, we can do that. My concern, quite frankly, is the near-to-intermediate period.

I say that because of something that you also raised in your brief, and it concerns me more and more every day; that is, how do we manage the residual nuclear problems? I couldn't agree more wholeheartedly that to get the benefits we really need around competition, it has got to happen primarily in generation. Down the road I think it will happen. It can happen tomorrow, as we heard yesterday in Sarnia, if we allow people like TransAlta or Hydro Mississauga to come in and do what they could do under the new technological order, but the problem remains that underneath this waterline is a massive iceberg of residual nuclear difficulty.

You have been very strong on pages 9 and 10, indicating from your point of view, for example, "Until nuclear performance can be assessed with confidence, it is impossible to attribute debt." I think you're absolutely right. Can you perhaps amplify? What are you hearing about NAOP and what do you think exists by way of reasonable market tests for the Ontario Hydro nuclear assets, whatever they may turn out to be?

Mr Wahl: My concern really is going back to what Mr Gilchrist said about the cost of generation. Currently we buy power at six cents and combined gas cycle is at

around four cents or perhaps less, and the nuclear is coming in — a quote from Mr Farlinger — I said two cents and he corrected me and said it's 2.5 cents.

What I keep hearing from Ontario Hydro and what we don't know is the economics of that statement. Is that the incremental cost of nuclear, or is that the all-in cost of nuclear, in other words, the cost of the capital infrastructure? That uncertainty is one of the things that's undermining the market right now for the investments that Mr Gilchrist was talking about that are being made in Sarnia. We're looking at some investment in Mississauga right now, but our investment is undercut by just what is nuclear going to come in at? What price is it going to come in at for sure? Again, the allocation of debt, depending on how the government does that, is extremely critical. That will affect future investment in generation in the province.

Mr Conway: We had a financial report from Ontario Hydro this past year which set aside \$6.35 billion worth of unsupportable obligations, most of which had to do with the underperforming nuclear power division. I don't think the bulk of those costs are anywhere in rates today.

Mr Lessard: I share your concern that the price of electricity may not in fact go down. Really, there's every reason to expect that it may go up, at least in the short term. Other than the minister's optimistic assurances that prices are going to go down, we really haven't heard that from any of the presenters before this committee. The government isn't about to put any guarantees in the legislation that prices are going to go down either.

One of the things you have spoken about in your presentation flows from Mr Conway's questions about the stranded debt and the amount to be attributed to decommissioning and disposal of nuclear waste. You've made a recommendation here that there should be mechanisms in Bill 35 that address Hydro's debt imbalance scenarios. You make that suggestion in anticipation that the amount of stranded debt is either going to be estimated prematurely or too high or too low. I'm not sure exactly what it is you mean by that recommendation. I wonder if you can expand on that for me.

Mr Wahl: I'm not sure I understand your question.

Mr Lessard: You make a recommendation that there should be some mechanisms in Bill 35 that address the issue of the stranded debt amount being wrong. I don't know what you're suggesting there.

Mr Wahl: The mystery that surrounds Bryne Purchase's report. It's very difficult to understand just what is here and how big is the beast that we're trying to tie down and get under some kind of control. There needs to be a very transparent and open process that we are made aware of, that we're satisfied that what is being done is proper. There needs to be more debate on it than there has been up to this point.

The Chair: Mr Wahl, thank you very much for bringing the perspective of your utility before us. We appreciate our advice.

Mrs Johns: I have a point of clarification. On page 7 of Mr Wahl's presentation, paragraph 3, on section 47, the first line says, "Servco can, through its subsidiaries,

include both retail and wires." In subsection 47(4) it's transmission and distribution, not retail, OK?

When it talks about the MEUs being treated differently — that's in the Electricity Act, for Mr Power — in the last line of that, section 70 under the Ontario Business Corporations Act allows the distributor to be a distributor and a transmitter also. So it treats it the same way.

Subsection 69(2) makes sure you have to keep segregated accounting.

Those sections are important. It's not worded very well in the presentation, so I just wanted to clarify that.

Mr Conway: I want to know what Mr Power is doing here —

Mrs Johns: Just good looks, I guess.

1440

ONTARIO HYDRO CENTRAL MARKET OPERATIONS

The Chair: I now call upon representatives of Ontario Hydro Central Market Operations. Gentlemen, thank you for coming. Long time no see. We're looking forward to your formal presentation. Please begin by introducing yourselves for the Hansard record.

Mr David Goulding: Good afternoon. Thank you for inviting Central Market Operations to participate in these hearings on Bill 35, the Energy Competition Act.

First of all, it was a pleasure showing you our Clarkson facilities this morning and explaining how the integrated bulk electricity power system works in Ontario. I hope you found the visit and the information we provided useful.

My name is David Goulding. I'm the senior vice-president of Central Market Operations. Joining me today are Derek Cowbourne, our chief operations officer, and Paul Murphy, vice-president of market effectiveness and evolution.

Central Market Operations, CMO, today is playing two roles. First, as Ontario's electricity system operator it manages the operation of the integrated power system to ensure the reliable supply of electricity for Ontario. Second, Central Market Operations is evolving, hand in hand with government policy and the work of the Market Design Committee, to become the Independent Electricity Market Operator, IMO, as we move towards a competitive industry structure.

Because electricity can't be stored, it must be manufactured and distributed instantaneously to meet customer demand. The challenge is to match the amount of generation with customer requirements at all times, while protecting against events that could cause the lights to go out.

This process consists of two parts. The generation and transmission of bulk electricity to supply points is one, including the direct receipt of that electricity by consumers or by distributors such as municipal electric utilities. This process is the management of the operation of the integrated power system. The integrated power system is the interaction between generation, transmission and bulk consumption. Second is the distribution of electricity from

bulk supply points down to the fuse box. Last winter's infamous ice storm presents an illustration of these two processes. The successful operation of the integrated power system ensured that electricity was available at all bulk supply points across Ontario. This made it possible for local distributors to deliver power to consumers as soon as they were able to repair their local infrastructure from the damaging effects of the ice storm.

CMO manages the operation of Ontario's integrated power system. Today we coordinate the interaction between generation, transmission, neighbouring jurisdictions and bulk consumption for the benefit of retailing utilities, directly supplied customers and generation companies in Ontario and to keep the lights on.

CMO's responsibilities include a broad range of activities, from operations planning, electricity system security assessment and scheduling all the way to real-time coordination of the power system.

The nerve centre for the operation of the integrated power system is our system control centre in Clarkson, about 30 kilometres west of Toronto. Our employees in the system control room are on the job 24 hours a day, seven days a week, monitoring and directing the generation and delivery of electricity throughout the province.

Our staff ensure the continuous supply of electricity and the price-based priority selection of electricity generators. Where there is a conflict, maintaining a continuous supply of power takes precedence over the price of electricity generation.

Through careful planning and minute-to-minute management, control centre staff ensure that operating reliability standards and limits are respected throughout the integrated power system to avoid power interruptions and to protect expensive equipment. They make sure that voltage levels are adequate and correct and that loadings on transmission lines and output from generators are within system reliability limits.

In addition to managing the operation of Ontario's integrated power system, CMO operates an internal market for electricity and bills wholesale and large direct customers, and settles accounts with electricity producers.

Electricity does not recognize international boundaries. Events affecting the reliable delivery of power in one jurisdiction instantaneously affect the reliable delivery of power in other jurisdictions. Electricity produced in one location can flow through multiple jurisdictions to its end point, influencing other parties' transactions and use of transmission along the way.

The North American Electric Reliability Council is establishing a system of mandatory reliability standards, including an organization of shoulder-to-shoulder security coordinators. The responsibilities of these security organizations will include the coordination and implementation of interjurisdictional reliability standards.

Independent system operators, also known as ISOs, are also being established to provide open access to the transmission systems across the United States. These ISOs will also ensure the reliability of the integrated power

system. The IMO will be both the ISO, or the independent system operator, and the security coordinator for Ontario.

These reliability standards will get embodied in the market rules and regulations currently being developed by the Market Design Committee.

The international characteristics of electricity make the growing introduction of competitive wholesale electricity trading in the United States an irresistible force for Ontario. Electricity moves north to south and south to north regardless of the nature of how the electricity is being traded. Ontario must begin the process of putting in place the long-term price signals competitive markets provide so that our electricity system remains competitive with similar trends already initiated by our trading competitors in the United States.

As today's independent market operator, the CMO is already strongly impacted in its day-to-day operation by changes in the United States. Without the introduction of comparable institutions of competition in Ontario, our job will continue to get proportionately more difficult. Ontario cannot remain isolated in the new world of competitive electricity markets.

Jurisdictions throughout North America and around the world have recognized the need for a strong, independent system and market operator to provide the reliable foundation for a successful competitive electricity market. Everybody is interested in competitive electricity prices, but the lights have to stay on.

The process of managing the operation of the integrated power system to keep the lights on carries over into the new industry. A reliable power system is the very foundation upon which to build a competitive market.

In addition, as outlined in the white paper and now in Bill 35, there are six basic operations at the core of a competitive electricity market: (1) collecting the offers of competing suppliers and the bids of purchasers; (2) dispatching supplies to meet requirements based on least-price bids and bilateral contracts; (3) settling financial trades between buyers and sellers; (4) forecasting electricity supply requirements; (5) encouraging investment as necessary and advising government if additional steps are needed to ensure an adequate and reliable supply of electricity in the province; and (6) acting as an impartial manager of the electricity system, helping to ensure that competition develops quickly and without abuse of market power.

For the competitive market to work, these operations must be conducted transparently by an independent agency, such as the Independent Market Operator, that has no links to any market participant.

Jurisdictions that have introduced competitive electricity markets in an organized and planned way have found that system reliability has improved. But this doesn't happen naturally. Reliability standards must be built into the new market. Bulk electricity reliability has been maintained or improved in areas where the authority of the ISO or IMO was recognized as part of legislation and market rules. Distribution interruptions and service has improved in jurisdictions where competition and choice have been allowed to flourish.

Adequacy of supply requires that the market rules and instruments underlying the legislation be carefully designed to provide the right competitive signals and motivators.

The nature of electricity places reasonable, manageable but unfortunately sometimes intrusive constraints on the free operation of the commodity electricity market. Electricity is not an ordinary commodity. For this reason, as outlined in the government's white paper, a key feature of the market is a strong IMO whose principal task is to facilitate a competitive market. The promotion of a competitive market requires conformity with pre-established criteria ensuring reliability and a set of clear market rules to guide the activities of market participants. The province has issued a well-formulated white paper policy for introduction of competition. It drew heavily on the successes of other jurisdictions.

The province has put in place a well-qualified Market Design Committee to advise it on the design of the new market. That Market Design Committee is drawing heavily on the experiences of other jurisdictions. The draft legislation before the House and this committee closely follows the advice of the Market Design Committee.

Bill 35 has been designed to be enabling legislation rather than prescriptive legislation. The market rules and regulations underlying that legislation will provide the details. Other jurisdictions teach us that it is important to have a flexible process to develop the detailed market rules and regulations. This will allow adjustments to be made as the electricity markets mature.

1450

The industry regulator is the Ontario Energy Board. The Independent Market Operator is an independent body to oversee the operation of the competitive segment of the industry and its evolution. It operates within policy laid out by government and under the forbearance of the Ontario Energy Board. There is a natural partnership between the IMO and the OEB to work together to achieve Ontario's policy objectives for the industry and avoid costly duplication. This partnership is key, because the nature of electricity, the operation of the integrated power system and the operation of the wholesale market necessitates a technical and minute-by-minute working relationship between the interactions of the monopoly and the competitive sectors of the industry.

In conclusion, the legislation enables a successful new electricity supply industry for Ontario. Central Market Operations is working with government and market participants to ensure the design of market rules and regulations will promote a reliable and competitive industry structure.

Thank you for your time and attention. We would be pleased to answer any questions.

The Chair: Thank you. There are six minutes for questions from each caucus. Mr Lessard, can we begin with you, please.

Mr Lessard: I don't have any questions.

The Chair: Thank you. Mr Baird, please.

Mr John R. Baird (Nepean): Thank you very much for coming before us today. I think your presentation is certainly one of the most interesting we've heard, and in many respects you could argue that it's the most important in terms of the issues you've raised. We've all discussed the role and the importance of the consumer benefiting. We've had a lot of discussion about price. We've had a lot of discussion about stranded debt and about a whole host of academic issues. But the bottom line, as you've defined it in a number of places in your presentation, is that everyone is interested in competitive electricity prices but the lights have to stay on. You discussed system reliability having improved in other jurisdictions and then finally, under 4(b) in your presentation, tension between commerce and reliability.

I come from eastern Ontario, where we've just been through the ice storm, which was obviously a significant experience, not just for those in the hydroelectric field but indeed for all the residents, particularly in the rural areas, and for the agricultural industry, particularly dairy operators.

I wonder if you might explain to me, in your own opinion, how you see an IMO working and operating in terms of maintaining system reliability in the event of a natural disaster like that.

Mr Goulding: There are a number of areas in which we would operate. First of all, I should explain that the IMO as such will be managing and operating the wholesale market and the high-voltage integrated power system rather than the distribution network down at the customer end. However, in order for any customers to receive supply, it's important to ensure that you have a secure integrated system network.

The IMO, first of all, will be working within and applying and helping to amend and modify all of the rules that are necessary in order to have participants take part in the marketplace, to ensure that people who connect to the marketplace meet certain criteria, to ensure that we have the appropriate limits in the marketplace. This is necessary on an ongoing basis, because this is a dynamic relationship.

But furthermore, in terms of, first of all, general contingency planning, we look at a wide range of possible contingency situations that may arise and put in place a number of plans that we can implement for a number of different types of scenarios: the loss of a large generating station, a tornado that might rip through parts of the province, even to some extent an ice storm.

The point is that you can't always predict exactly when any of these events are going to happen. So we have these as plans, if you like, that can be adopted at the time of the event. However, what you inevitably find is that with the best advance planning, some circumstances will be somewhat different at the time. So we make sure that our staff are well qualified. First of all, the people we have on shift are capable and authorized to make rapid decisions in order to maintain the integrity of the system or to maintain the extent of default or to put the system back together again. Similarly, we have backup staff available who will

look at the circumstances and be immediately involved in identifying new system configurations, new limits that need to be applied.

Similarly, we have agreements with our neighbouring utilities regarding the support they will give us in those circumstances. Those are well defined and will be activated immediately. We have agreements with the generators, the transmission people and others throughout the province, including customers who we can rotate in the load share if necessary in order to maintain the main system, to keep most of the customers in supply.

The bottom line is there are many plans available, there are many ways in which we are ready to operate in those circumstances. That's one of the reasons why during the ice storm, for example, the integrated system itself was always operated within limits and was always in compliance and was sitting there waiting so that as soon as the distribution network was brought back, the supply was available.

Mr Baird: On page 5 of your presentation you talk about how in other jurisdictions where electricity competition has been introduced in an organized and planned way, system reliability has improved. Obviously the ice storm of this past winter was an anomaly and certainly the storm of the century for Canada. Are there any other jurisdictions where they've had a significant natural disaster where there's a competitive environment? Has there been anything written on that that you're aware of?

Mr Goulding: I'm not aware of anything similar to the ice storm, but in most jurisdictions, those that are currently competitive or otherwise, there are frequently a number of events that take place which require rapid restoration and pre-preparation.

What I think we're seeing in general terms is that where there's a competitive market and where customers and others have a choice of who their supplier is going to be in future, then there's an additional incentive for those suppliers in two respects. One is to be prepared to respond very rapidly in order to put those customers back on supply; and second, which is related to the first one, what we're actually finding now — if you look to the UK, you see a lot of examples — are contracts and agreements that are actually being put in place, some of them directed in fact by the regulator in the UK saying, "Connection times should be thus-and-so, and if not, there's a penalty," or "Restoration time should be thus-and-so or there'll be a penalty."

In the competitive marketplace, not only does the customer have more choice of the supplier, but partly due to the regulator and partly due to the utilities themselves, they're looking at stretching themselves, stretching their competitive element to offer better service than the person next to them. Generally we find that the regulator says, "These are certain standards," but the attempt is to better those standards, to be number one.

Mr Baird: Throughout these hearings from time to time we've had various groups come forward and discuss renewable energy suppliers, consumers having choice in terms of green power. In an advanced bidding market

system, how do you see those renewable energy suppliers, whose supply may be intermittent and less predictable than the traditional approach we've used in nuclear or fossil fuels?

Mr Goulding: Again, it depends on how the market rules are evolved. They certainly could be evolved in such a way, for example, that such intermittent suppliers could be recognized to be effectively only bidding into the system, if you like, during and whenever their generation is available. They could be doing that into a spot market. Whether that spot market is the same transparent spot market or whether there's some additional incentive, that's going to depend on the rules that get developed.

They could also have specific contracts with customers. As and when their generation is up and running, when the wind is blowing, for example, this customer might say, "We'll pay an additional premium and we'll take that amount of energy." So while that particular power doesn't get delivered directly to that customer, nevertheless that customer is paying to have a reduction in emissions and increased use of green power.

Mr Baird: So the system could accommodate that type of consumer choice.

Mr Goulding: The system can accommodate that kind of consumer choice, yes.

The Chair: Thank you very much. I just want to say again on behalf of the committee for the record that we very much appreciated the hospitality you extended to us this morning. Although the questions were brief this afternoon, there were a lot of questions that you answered for us this morning and we very much appreciated your taking the time to do that.

1500

E.W. BROWNE

The Chair: Now calling representatives from the United Church, sip and serve committee. Welcome to the committee. Please begin by introducing yourself for the Hansard record.

Mr E.W. Browne: E.W. Browne is the name, 601 Bob-O-Link Road, Mississauga. I'm a member of the United Church but I'm not speaking on behalf of the United Church. We didn't have a referendum on this or anything like that. I belong to a sip and serve committee there. We don't drink a lot of liquor; we do things. OK? I'm here. Thank you.

It's a very democratic situation. It's very essential that this is done this way, the input.

For the financial protection of Ontario payers, why Ontario Hydro should not be privatized: Ontario Hydro is making a profit each year and this money is used to pay off the Hydro debt. For example, between the years 1996 and 1997, they paid down \$1.849 billion in that one year. In my submission, if you go back to the third-last page, you'll see from the 1997 annual report, the third line down, how Hydro has paid down the debt since 1993, right up to 1997, each year. Last year they paid \$1.849 billion off the debt. Over 16 years, it would reduce its debt

to zero. We're dealing in futures; that's approximately. I underline that.

I would like to read a paragraph from an article written on "Ontario's Options for Ontario Hydro" by Professor Myron Gordon, faculty of management, University of Toronto. The introduction to Professor Myron Gordon is on the front page. He graduated from Harvard and is a professor at the University of Toronto. The introduction is in French, so I'm not going to do that.

"An attempt is being made to convince the people of Ontario that deregulation and privatization of Ontario Hydro (OH) is the best way to ensure cheap, reliable power for the province. This distracts attention from two fundamental realities. First, the privatization of OH and its breakup into a number of independent corporations would substantially increase the cost of electric power. Second, 60% of OH's capacity is nuclear, and its privatization has not been proposed. Premature retirement of a significant fraction of OH's nuclear generating capacity, due to management failure at the corporate and provincial level, is possible. It would have catastrophic consequences for the province. Specifically, premature retirement could result in the transfer to the province of as much as \$15 billion in OH's debt that it would have otherwise serviced and retired through operating revenues. It could also force OH to turn to natural gas as a primary source of fuel for electric power. The cost of gas generation is already much higher than the cost of continued nuclear generation, and could be expected to rise even more in the future."

This article was written in April 1997 by Professor Myron Gordon. The whole thing is included in here. He deals with several different factors in that article. He deals with the effect of the free trade agreement. He does not touch on the energy agreement we have, the North American energy agreement, but that would come into effect.

The effect of the free trade agreement is being experienced right now with Ethyl Corp suing the federal government for \$700 million because the federal government wants to eliminate the use of additives. Seven hundred million dollars was what Ethyl sued the federal government for. The federal government, a few weeks ago, settled out of court, paid the expenses — \$20 million — to Ethyl Corp. We cannot take this additive out of the gasoline, yet California and many other states do not use that. This was free trade exerting itself and it's an example of this in business.

If we take a look at the financial summary page, you'll see, in the top right hand corner, debt outstanding and how it's been reduced since 1993. You can see that those graphs could be projected and it would eliminate itself in approximately 16 years. This year we're spending more money on upgrading the efficiency of the nuclear plants, which is going to impact on the debt this year, but as this is to improve the efficiency of the generators — it wasn't a safety problem, it was an efficiency problem — it should contribute to reducing our debt, this work they're doing on them now.

The second last sheet in my presentation, "Nuclear Technology has Admirers," Gordon A. Robb was the

author of this, and it was in the Financial Post July 3, 1998. He points out — I underlined a few points there — British Energy wants to buy into Ontario Hydro's nuclear program because of its quality, because it's a very good system. Candu was developed by Ontario Hydro and the Atomic Energy Commission of Ontario.

PECO (Philadelphia Electric) wants it because the Candu is a very safe reactor. I've seen charts showing how they're used all over the world, many places, and Ontario is the only place on this chart that shows them all being overhauled. It was in Maclean's about a year ago. It points out that a rupture of a pressure tube in a Candu reactor isn't a catastrophic problem like in some other places.

A very pressing problem is the supply of natural gas to cogenerating plants. I noticed the TransCanada PipeLines stock was pretty sad this year. They cancelled a big pipeline in the last few weeks because they haven't got the gas to fill the line. They have to look ahead before they put in a big line.

1510

On the last page, reliability of power supply: Ontario Hydro supplies all the power to Hydro Mississauga and on the last sheet we see where multi-million dollar rebuilding programs and targeted preventive maintenance improve the quality and give it world-class reliability in the supply of power. Power outages in Mississauga in the last year were down to 32 minutes per year; the year before it was 115. If you talk to somebody who lives in Quebec, you'll find they appreciate the reliability of our systems.

An example of how Hydro works here: They are replacing some of these big towers with new, modern, one-piece monolithic towers which don't suffer under the ice storm situation we had last year. North of the Queensway, they've doubled up the towers along there in the last few years. The new towers are south of the Queen E between, the Lakeshore and the Queen E in Clarkson.

This last summer, the summer of 1998, we had a lot of problems in the United States, on the eastern seaboard. In fact three years ago, Chicago and New York Edison were cited by the American government for failing to supply adequate power to certain areas of their two cities, resulting in 700 people dying in the summer three years ago for lack of power in certain areas. In the summer of 1998, both Chicago and New York had major brownouts and blackouts in certain areas of their cities and the eastern seaboard suffered a shortage of power.

If I can buy power from anybody, they can sell power to anybody. In all of the states bordering Ontario, the average rate of power is higher than our average rate of power. So I'm going to have to pay more for power if I want to buy it from an individual company because they can ship it to the States because of the free market. They can't stop them from shipping it there. As to the free trade deal and the North American energy deal, you have to look at that very closely and see how we're protected against that.

Professor Myron Gordon's article should really be studied because in 1997 he digested the problem very

thoroughly and deals with a lot of these factors very well, and the annual reports of Hydro are very good. Any questions?

The Chair: Yes, we have five minutes of questions from each caucus. We'll begin with Mr Lessard.

Mr Lessard: Thank you very much for your presentation, Mr Browne. I appreciate your taking the time to come and address our committee because far too often during our deliberations we hear from people who represent large organizations or incorporated interests or people who feel as though they're going to benefit from Bill 35. It's unfortunate that we don't hear more from residential consumers, which I'm assuming you are.

Mr Browne: That's right.

Mr Lessard: Those are the people for whom I'm concerned about the impact of Bill 35. Those are the people we as legislators need to be looking out for.

You've included a resumé for Myron Gordon, the person who wrote this article. You've told us that although you belong to the United Church, you're not here speaking on their behalf, but can you tell us a little bit about your own background and how it is that you became interested in Ontario Hydro issues?

Mr Browne: I have no more financial interest than you do or anybody else, peanuts. But you have to look ahead. When I was a little kid, people in Toronto did their cooking on gas stoves that were supplied by manufactured gas. Houses were heated by coal. I've been around a bit. After the Second World War, people switched to oil and then finally gas arrived here. The oil went out and gas took over.

I'm in the stock market. Enerflex: You should have had your money in that. The stock was really beautiful. About six weeks ago, I dumped it because it started going down. What does Enerflex do? It makes gas pumps. It takes a little bit of gas and runs it through a jet engine which pumps the gas. So Enerflex isn't pumping gas and Trans-Canada PipeLines is not going on with its new pipeline and our gas situation is going to get a little tighter. The price of natural gas is going up. So on the market you might buy stock in natural gas companies.

Did I answer your question?

Mr Lessard: Do you think Hydro rates are going to go down for people like yourself as a result of the government's initiative?

Mr Browne: No.

Mr Lessard: Do you have any suggestions for us as legislators to try and ensure that residential consumers like yourself do see lower rates in the future?

Mr Browne: All right. I can see that we can get rid of this debt in 16 years by carrying on right now the present situation. Don't give me this baloney about stranded debt. It's just debt. Don't put any icing on it. It's just debt the people of Ontario are responsible for. It can be taken care of by the earnings of Ontario Hydro easily in 16 years. That's a major factor in the cost of operation. If you get your annual reports, and I've got 1995, 1996, 1997, and analyze them, you'll see that we can take care of that debt hands down.

Read this article from Myron Gordon. I was instrumental in getting him to speak to the University of Toronto in 1995 on this very subject. He used this article for the main thrust of his speech in 1995.

Mr Lessard: Do you believe it's the government's agenda to privatize Ontario Hydro?

Mr Browne: This is the beginning stage of it. This is the first act of the whole deal.

Mr Lessard: Why do you think they would be doing that?

Mr Browne: If you have companies that are interested in making a big wad and influencing people, sure.

Mr Doug Galt (Northumberland): Thank you, Mr Browne, for the interesting presentation and bringing forward the paper that you have.

I'm intrigued with your organization, sip and serve. I can say with great assurance you're the first one to present from the sip and serve committee to the standing committee.

Just to follow up on Mr Lessard, certainly the bill we have before us has to do with competition, not to do with privatization. I know the thought is in your mind down the road, but that's certainly not the thinking of the government at the time.

The other thing I want to comment on is you made reference to deregulation. Yes, when you go into competition a lot of people think of it as deregulation. In this case, it's actually going to add an awful lot of regulations to the books to be able to look at competition outside of Canada and the US. For example, environmental regulations will have to be very extensive.

Just a short reference on my feeling on reliability of supply, most of the problems have related to the transmission wires in the past and that will still be controlled by a company such as Servco, some such name as that, which will be a crown corporation that will be run by what is essentially now Ontario Hydro, and that's where you have the ice storm, wind storms etc that blow these lines down.

1520

We have received an awful lot of support from several groups for the general direction we're going in, including the opposition — I know they don't agree with every detail — the Power Workers, even Ontario Hydro. They basically agree with this direction.

I think it's interesting looking at Professor Gordon's opinion as an economist. I think you can get an opinion from as many economists as you interview. They all have a different opinion. There is even the odd economist who doesn't quite agree with the direction of our government, but they're very few and far between.

What I'm hearing you say is that you agree with the status quo of the electricity supply in the province of Ontario.

Mr Browne: It's not perfect management — we never find that in any organization — but it's status quo is pretty good. If we get down the deficit, and they are getting down the deficit — our energy is delivered to us cheaper than any other area except Quebec, which I suppose is lower

than here, and Manitoba, because they're 100% hydro, whereas we only have 25% hydro.

Mr Galt: In seven other provinces it's cheaper than here in Ontario, and for the Ford Motor Co, they're down to 13th where they produce cars that are most expensive. In 1985 it was the cheapest here in Ontario.

I want to pass on to another member so I will quickly ask you: In a lot of what we're hearing about the past problems in management with Ontario Hydro, it's an accountability problem. We believe that competition will bring in that kind of accountability. If we don't bring in competition to bring accountability to the management of Ontario Hydro, what would you suggest we should bring in?

Mr Browne: Governments have auditor generals and give them a great budget and they look at and they come out with any horror stories. Don't give me the story that a limited company that's in business is a success. The field is full of limited companies that are just dragging their something around. They're not doing much. They're existing. Just because it's a limited company, that isn't a definition of successful management. It's a success, it's running, but it's not doing great. Ford, Chrysler, General Motors, all sorts of companies, have had horror stories in their day. So Hydro has had a horror story. They've over-expanded themselves. They built too many reactors, maybe. But they were going by the free trade deal that was supposed to make a great big surge of industry in Canada. Well, it did in raw materials but not manufacturing, so the consumption of Hydro went down.

These nuclear reactors take a long time to build. The first ones took a long time because it was a new industry, a new design. It was very expensive. If you read this small article here, it refers to our nuclear system becoming a good system, you see. It's being overhauled now and the Americans, Philadelphia Electric, and British Energy, are looking at it. They'd like to get control of it because it's good technology. That's this little article here.

Mr Conway: Mr Browne, the sip and serve: I thought it was the All-England Lawn Tennis Group, but you're just here speaking for the people and that, as Mr Lessard and others have observed, is a very good thing.

Interruption.

Have we got a kasbah out in the hall or what kind of azaar is going on there? Perhaps we should invite everybody in.

The people are expecting that some of the problems we've got are going to be dealt with and the benefits that change is going to bring will be generally beneficial for all classes of ratepayer.

Let me be a bit provocative because I could argue, and I will argue, that the original plan for public power in the province did not contemplate the vertically integrated monopoly we've had in this province, particularly in the post-Second-World-War era. The big fight in the beginning was to see that these pirates, and I won't mention them by name but they are well known if you know anything about the literature — one of them owned Casa Loma, or built Casa Loma, I don't know that he ever

actually owned it — not seize control of this vital commodity. The way that the Legislature in the beginning thought this could be managed was by making sure that the transmission of electricity was in public hands. For a long period of time it was contemplated, and it was the reality, that generation would be a mix of primarily private and some public power. Beck built his commission, a public commission, to quite frankly be beyond public control and he succeeded throughout the ages. The success of that unaccountable public enterprise that became Ontario Hydro has brought us to some of the difficulty we've got today.

I have disagreed with Professor Gordon, who is a very fine fellow, but the difficulty is that since his April 1997 paper we've had some subsequent analysis of the single biggest aspect of Ontario Hydro, which is the nuclear division. Things are not very happy. I can't believe anything out of Ontario Hydro these days about the financial affairs of Ontario Hydro, not because I want to be skeptical, but why would I?

You've got the 1997 financial report. Phillips made off with my copy yesterday. In that report the board of directors blithely says that using the rate-setting powers vested in the board they are setting aside, for the financial year 1997, \$6.35 billion of unrecoverable cost. What the hell do I make of some \$6.5 billion worth of writedown? Where is that in the rate? What is the true cost of a technology that I have believed in and still believe in?

I think the nuclear option is still a good option, but I say that very reluctantly now on the basis of our congenital incapacity to run these plants, apparently, with any degree of efficacy. I'm interested quite frankly in British Energy, or anybody else who can come into this province and inject into Ontario Hydro Nuclear some kind of management expertise that will produce better results. Let me tell you that what I saw, with Mrs Johns and others in this Legislature last year, at this very time or a little later perhaps, as to the ongoing difficulties at Ontario Hydro Nuclear gives me a great deal of concern about, not only the cost of the power but the reliability of the system, and perhaps even the safety of Ontario residents.

I'm sorry to have to say that because I bought the line 25 years ago. Boy, I was here when the prophets came. It was going to be almost perfection. Two and a half decades later, the people who promised the moon have delivered me a thin slice of very rancid cheese. What do I do about that? I like public power, but most of our public power in recent times has come out of a very troubled Ontario Hydro nuclear power division.

I keep asking witnesses, so let me ask the sip and serve committee, what do I do with an apparently congenitally malfunctioning management at the biggest single part of Ontario Hydro's generating capacity, not just today or yesterday but apparently over the last 15 or 20 years? Sorry to have gone on, sir.

Mr Browne: No problem. Look, it's 1993 to 1997. It is making a profit.

Mr Conway: The numbers are bogus.

Mr Browne: I don't give a damn how much they owe. I wouldn't mind owing that, as long as I can service the debt. If someone tells me I owe \$1 billion, to hell with it. If I can service the debt and show a profit, that's what we're talking about.

1530

Mr Conway: But who couldn't service the debt if every year —

Mr Browne: I've got the floor, come on. I've got the floor.

The Chair: But we are almost out of time, Mr Browne, please.

Mr Browne: I've got to leave? All right.

We've paid down the debt. Since 1993 we have been paying down the debt, that's the important thing, and in 16 years or less. We are supplying electricity for less money than any other neighbouring jurisdiction except Quebec, which gets it all with water, and Manitoba, which gets it all with water. BC has cheaper power probably, you see, and Alberta has, but Saskatchewan, PEI — OK? We're getting it for less, and that's important. Don't worry about the management. The management is in good hands. We've got this guy, he's a CA, he ran Ernst and Young or one of the other big —

Mrs Johns: A good guy, Farlinger.

Mr Browne: A good guy. You know him. He's a smart guy, and he must have a lot of faith in it because he has committed \$5 billion to upgrade the reactors. If he doesn't know where he's going to get the \$5 billion he has no business doing it, but he's a smart guy. He knows he's going to get it back. Relax. He's spending \$5 billion to upgrade those reactors, and he's not going to do it unless he knows where he's going to get the money, and he knows where he's going to get the money.

In this enclosure, the Candu reactors — Philadelphia Electric and British Energy want to get hold of it. The Candu reactor is a great success in many places around the world. Maclean's had an article in their magazine last year that showed a map with all these different reactors around the world, Candu reactors, and none was being refurbished. They all must be running like clocks.

The Chair: We have to wind up.

Mr Browne: I'd better shut up. Thank you very much.

The Chair: I didn't mean to end it that abruptly. Mr Browne, we thank you for coming before the committee. It's a new perspective that we haven't heard a lot of, but we appreciate your taking the time to come before us.

Mr John Hastings (Etobicoke-Rexdale): Mr Browne, I think you should apply for some jobs at an Ontario nuclear facility.

Mr Browne: I make more money than when I worked. No kidding.

NEW YORK MERCANTILE EXCHANGE

The Acting Chair (Mr Doug Galt): We now call the next delegation, the New York Mercantile Exchange, Deniese Palmer-Huggins, director. Please come forward. Thank you very much for joining us today.

Ms Deniese Palmer-Huggins: Thank you for inviting me here. I'm afraid I'm not going to be as entertaining as the last person — a little bit more dry material.

First of all, I'd like to introduce myself. I'm Deniese Palmer-Huggins. I'm the director of the Houston office of the New York Mercantile Exchange. I tell most people that that makes me an oxymoron.

I was asked here today basically from an information standpoint. First of all, I'd like to point out that the New York Mercantile Exchange and I do not take a position on the bill. We are here purely from an information standpoint, to impart to you how our risk management works, how the exchange works, who we are, where we came from. I'd like to just set the stage with that.

I'd also like to clarify that the topic of risk management is a very complex one and a very lengthy one and in 15 to 30 minutes today I am not going to cover all the bases. I am not going to be able to explain it in its entirety and you're not going to be able to walk away being experts. I just have to set the stage and tell you that this is not a topic that is easily discussed in this amount of time. But I'll do my best to try and give you as much information as possible. I will be happy to answer questions and I can also tell you that there are a number of forums in which you can send delegates or other members to educate themselves further. One of the things we spend a lot of our time doing is trying to educate the populace about who we are and how we function.

With that, I'd like to set the stage and tell you where we came from. The New York Mercantile Exchange is 126 years old. I think most people don't realize that most commodity exchanges are over 100 years old. For example, the ones in Chicago are about 150 years old and the Kansas City Board of Trade is 140 years old. We started in 1872 as the Butter and Cheese Exchange, so obviously we've had a lot of changes ourselves. In 1882 we became the New York Mercantile Exchange.

We are the largest physical commodity exchange in the world. What I mean by "physical" is that you can actually make physical delivery of a commodity, and I'm going to get to which commodities we trade on our exchange in just a few minutes. In 1994 we merged with another exchange called the Comex, which basically trades metals, and that made us the largest physical commodity exchange in the world. In terms of volume, there are other exchanges that are larger. I believe we rank seventh in terms of volume in the world. Based on that, it's to clarify the position that it's based on the physical delivery.

I'm going to spend most of my time addressing my remarks about the Nymex division as opposed to the Comex division, because Nymex is considered the energy division of the exchange and that is basically what my background is and I'm sure what your perspective is.

I said that the New York Mercantile Exchange is 126 years old, and this is correct. However, we've only been in the energy business for 20 years, but we were the pioneers in introducing energy futures contracts and risk management to the energy industry. We introduced the first energy contract in 1978, which was a heating oil

contract. For those of you who know much about refined products, it is sometimes referred to as number 2 fuel oil or, as we call it in the south, diesel. For a lot of folks in the northeast, it's referred to as home heating oil.

It was when we introduced that contract in 1978 that we really realized that we had hit upon something. Previous to that, we had traded such commodities as nickel, potatoes, eggs, butter, cheese etc, but it was in 1978 when we introduced the heating oil contract that we realized there was a definite need for risk management in the energy industry. From there on, we began to introduce additional contracts. In 1983 we introduced what we call a light sweet crude oil contract. I refer to it as light sweet crude oil because it is quite often referred to as west Texas intermediate, which is only one of the grades of crude oil that actually fits that label. Affectionately, most people refer to it as WTI, but that would be incorrect.

That still to this day is the bread and butter of the exchange. It is the most actively traded contract we have on the exchange. It trades on average 100,000 contracts a day. In 1990 we introduced a natural gas contract, based on a delivery point in Louisiana called the Henry hub. That contract is probably the second-most-successful contract the exchange has. It trades on an average of about 50,000 contracts a day.

In 1996 the exchange introduced two electricity contracts. I know you were wondering when I was finally going to get around to something that interests you. In 1996 we introduced two electricity contracts that are based on delivery in the western part of the United States: the California-Oregon border and Palo Verde, which is in the Arizona switchyard. That also led us to realize that there is still a need in the electricity industry for risk management as well. In 1998, in fact on July 10, we introduced two more electricity contracts which are based on delivery in the eastern United States. For those of you who are familiar with the reliability councils in the United States, one is based on a mid-Atlantic delivery point, which we refer to as an into-Cinergy delivery. The other one is delivery in the SPP, the southwest power pool, which is an into-Entergy point. Based on that, we now have begun to experience risk management in the electricity industry.

The exchange itself has a volume of about 70 million contracts yearly, on an annual volume. Daily, we have on the Nymex division about 250,000 contracts traded. That's just to give you an idea of what our volume is.

I'd like to take a moment and explain what the economic role of commodities exchanges is, for those of you who may not be familiar. We provide a number of functions. Number one is price discovery. Now, through an exchange which broadcasts that pricing information, you can now know the price of that commodity. What basically happens is — and a lot of people have a misunderstanding about us. We do not set prices. We are the forum in which buyers and sellers can come together. For those of you have had economics 101, it's purely supply and demand meeting to find that equilibrium price. That's what happens 250,000 times a day on the floor of the

exchange. We don't set prices, but we will broadcast them, we will publicize them.

Every day, when a buyer and a seller on the floor come together and transact a deal — one buys a contract, another one sells a contract — they establish a price. The moment that price is established, it is reported to a price reporter on the floor of the exchange, who then inputs it into a computer that turns around and sends it out to reporting agencies such as the Bloombergs and the Reuters etc of the world — I don't mean to particularly talk about them because it could be any of them — who then turn around and broadcast it for anyone who has a screen. In fact, you can dial up our Web site and go over to a section under charts and data and actually see pricing that is 15-minute delayed as well. There are a number of places you can get that information, but it's price discovery. You can now know what the price of that commodity is and you can see it as it changes. You can see what those buyers and sellers are doing on the floor of the exchange that 250,000 times.

1540

Another function we provide is what we call a hedging function. That doesn't refer to the bushes outside your house. There's actually a definition that makes most people's eyes cross the first time they see it, but basically what we talk about in hedging is that it provides a forum where you can shift your price risk. You can actually shift that risk to someone else, and we provide the forum in which that can be done. We also do it in a secured environment. That's not exactly one of our functions but it's one of the benefits of actually transacting business on a commodity exchange, that we will provide security. I'm going to talk a little bit more about that in just a few minutes, but it's one of the things I like to point out to people.

The commercial benefit of dealing with a commodity exchange is that there's a reduction of the incentive to hoard. Probably in electricity that's not so much of a problem since it must be consumed the moment it's produced, but in other commodities it can be a very real concern. If you think of wheat, coffee etc, in those particular cases there could be very real concerns to hoard the commodity.

We place the pricing mechanism in the public. As I was discussing earlier about price discovery, now there's a place where the public can come. For example, if you pick up the Wall Street Journal and flip to the back for pricing, you can actually look down there and see what the price of electricity is, because that is published. You can see what the other commodities are, but electricity now being traded on our exchange is considered one of those products and it is printed in the Wall Street Journal. You can go on our Web site. You can look at pricing information such as Reuters and Bloomberg. Eventually it may even be on the nightly news, as it is now for other commodities such as natural gas and crude oil. Probably in the future that will be something in the nightly news; they'll tell you what the price of electricity is.

Last of all, one of the commercial benefits we provide is the provision for a forum for shifting price risk. I usually do these sorts of things where I have flip charts and overhead transparencies to illustrate what I'm talking about. It's a little difficult when you're having to use your imagination now. Nonetheless, the other thing that happens is that there's price volatility. Prices go up, they go down.

For example, to give you some ideas in natural gas, they talk about price volatility as being about 60%. Crude oil I believe has a price volatility of about 35%. I don't even know what electricity is. It's too young yet; we haven't given figures. But I can tell you it is volatile, from what we've noticed on the exchange from the two years' experience we've had with the western contracts. The beauty of it is that we provide a forum where that risk can be shifted.

I want to spend just a few minutes telling you a little bit about how we are organized. First of all, commodity exchanges in the United States are regulated by the CFTC, the Commodity Futures Trading Commission. All contracts must be approved by them before they can be launched or listed for trading and all amendments to those contracts also have to be approved by the CFTC. But we also have certain safeguards in security. This is what I was referring to before. When you actually transact business — I'm going to speak purely on my exchange but I believe it's the same on most exchanges — on my exchange your transaction is guaranteed. We have a number of ways, I call them layers of security, that we can ensure that.

Number one is that we are a member organization. You have clearing members and regular members. Clearing members have a heightened liability. They must guarantee those trades which they clear. I can give you a list. There are about 55 clearing members that are members of Nymex, but you're going to find most of them are the major financial houses in the world, who have very large balance sheets. They must guarantee those trades they clear. That is just one mechanism.

Second, in the case of a clearing member defaulting, the other clearing members of the exchange would then have to come in and take on that liability as well. We would ask them to fill the gap. We would first look to the clearing member who guaranteed the exchange and their financial resources. We would next look to the other clearing members who are part of the exchange to then fill that void, who once again are these 55 major financial houses. Then, in addition to that, we also have a guarantee fund. Each clearing member must make a contribution to the guarantee fund of the exchange, and that's based on their capital. It can be anywhere from \$100,000 to \$2 million. Right now I am told that the guarantee fund that the New York Mercantile Exchange has is about \$75 million. We would have a number of different layers of financial resources to allow us to guarantee performance of those contracts traded on our exchange.

Another way we would do this is through the use of margins. I don't know how familiar some of you are with

that. If any of you have ever bought or sold stocks, sometimes this can help you clarify some of the points I'm trying to make. If you were to buy or sell a contract on our exchange, you would be required to put up a certain amount of funds, which are called margin, and you would be required to maintain that margin throughout the time that you have what we call a position on the exchange. That's usually referred to as initial margin.

We also have something we call variation margin, which basically means that every day a position is what we call marked to market. The position or the value of the contract would be established every day by the exchange, and if that position was losing money we would expect you to pay a variation margin. This would be in addition to the initial that you must maintain. Every day we are looking at the value of the positions of the contracts that people have bought or sold on our exchange and we will be marking them to market, which means valuing their value, and then we would be determining whether the party buying the contract or selling the contract had made money or lost money. That would then determine whether they had to make a variation payment.

We also set margins as relate to the volatility. As we see volatility in a contract increasing, we have the right to come back and increase margins. Once again, what we are trying to ensure is a fair and orderly market, and we are also trying to ensure that those participants in our market have the financial resources to participate and to perform. That's of great concern to us.

So margin is also another way we would help ensure the performance of those participating in our market, in addition to these other security measures I just referred to a few moments ago.

Another point is that in margins there are rules about how a margin may be paid. For example, initial margin must be met in cash or T-bills, US government securities. We will even take a haircut on the T-bills. In other words, we will only recognize them up to 95% of their value, so you would have to go up and beyond that value to meet your margin requirements. Variation can be met in cash only.

Another safeguard we have is something we call position limits. Once again, as I alluded to, it's very important to us to have a fair and orderly market, and that also means we don't want people manipulating the market. Therefore, we have limits on how many contracts you can hold. We have them in one month; we have them over all the months that are listed.

For example, in electricity right now there are 18 months for future delivery that are traded, so over that 18 months there would be a limit to how many contracts you'd be allowed to hold and there is also a limit in what we call the delivery month. That's the month that would be closest to delivery, and that's usually where we would have the most concern because it's next up for delivery. We would also have limits in that respect too so that we would not be allowing anyone to manipulate the market.

1550

Just to give you a little information, the electricity contracts, we've noticed — we have two years of experience now — in the west we've seen a volume of about 1,500 contracts a day. One electricity contract is 736 megawatt hours, which is deliverable over a month. How we come up with 736 is two megawatts per hour, 16 peak hours per day and 23 peak days per month.

The eastern electricity contracts are going to have 736. We are changing the western contracts to 864, mainly because we noticed that the marketplace wanted to have what we call 6 by 16 blocks versus the 5 by 16. One of the things we do at the exchange is that we stay in very close contact with the market. If we notice that things need to be changed or that the market changes or that there has been evolution or development, we try to change our contracts so that we continually meet our customers' needs.

That's just a very brief overview of who the exchange is and what we are, what we trade. I'll be happy to answer any questions you have. As I said, this is a very complex subject matter that's not going to be completely explained or illustrated in 30 minutes, but I'll do my best to try and answer whatever questions you might have.

The Acting Chair: Thank you very much for a very interesting presentation. You might be interested to know that we have also received a presentation from the Toronto Futures Exchange that was also very intriguing, especially for someone like me.

We first turn to the government caucus. We have four minutes per caucus.

Mr Hastings: Thank you very much, Ms Palmer-Huggins, for coming and making your views known to us on what Canadians and Ontarians would probably regard as a very scary world, because a lot of the presenters before this committee have been concerned about reliability of delivery of electricity. When you bring up the whole subject of risk management, Canadians get a little jittery about that whole terminology. I'd like to hear from you what the specific techniques are for managing volatility in electricity futures and contracts, how you keep that in balance in terms of delivering electricity futures.

I also would like to know if you have any plans as a Nymex forum for expanding to Canada. What would you see as the essential market conditions for getting a futures contracts and options market in electricity trading up in Canada, in terms of the players you have already as members? I suspect most of them are the huge international financial players of the world like Salomon Brothers. Most of our stock exchange members of the TSE have pretty well disappeared in terms of independents. Midland Walwyn is now Midland Walwyn Merrill, I guess, or some such name. We have no specific independents left. I would assume that would also be an essential condition for international trading in this whole area.

Ms Palmer-Huggins: I could probably spend 30 minutes answering that question, but I'll try to do it very quickly. First of all — I'm going to start with the last and go forward — in terms of independents on the exchange, we actually have something we call locals. These are just

individuals who trade for their own account. In that respect, I'd have to say there are still independents involved in trading. It doesn't necessarily have to be the large international houses. I myself have actually worked for small companies that were customers of the exchange in my 20 years of being in this business, so I can also tell you from that perspective that there are small companies out there that recognize the benefit they can derive from participating in the futures market in that they can shift their price risk to someone else.

Last of all, in terms of volatility and how you would do that, you use two instruments on our exchange: futures and options. This is not something I can explain very easily, without illustration, in two minutes or less, but basically what you do is that you are locking in a price. You can sell futures; you can buy futures. Whether you're buying futures or selling futures depends on what your underlying physical position is. For example, we usually refer to producers of any commodity, whether it's electricity, oil, natural gas, whatever, as being naturally short hedgers, "short" meaning that they sell futures. All they're doing is going into an exchange and doing the same economic function they would do in the marketplace, but they're doing it in a forum where they can do it early.

In other words, if I see the price of electricity at a good price right now and I know I can make money based on that price per megawatt hour, instead of waiting and seeing what may happen to me in the marketplace I can actually go and sell futures, which means sell future power, and I can lock in a price, and at that point I don't care if prices go up or down. They would hurt me if they go down, because it means that as a producer I would not be able to sell the power for as much money, and that is what I would be concerned about. Actually, in using futures, you shift that risk to someone else. You no longer are concerned with what happens with prices.

The downside is that if prices go up, you don't benefit in that either. I have to be fair and honest and tell you there are two sides to the coin. However, I would have to say at that point that's when you look to options. There are ways you can go out and use options, which are options on underlying futures contracts. You can once again use those like insurance policies to give yourself some protection. If that price were to decline you would be able to exercise an option, but if the prices went up you could still benefit in it.

Mr Conway: Thank you, Ms Palmer-Huggins, for a very powerful presentation. I don't profess to understand this business very well at all, but I have a couple of questions on the basis of what you've said.

First, I think you said about the volatility that appears to be evident in the electricity commodity business that in early going, it looked like it was more significant than some of the other commodities. Do you want to amplify that a bit? I'm interested.

Ms Palmer-Huggins: I don't have any figures to tell you. All I can say is that from what we can tell, it looks like the volatility seems to be extreme.

Mr Conway: Any indications of why it would be more extreme than, say, some of the other resource —

Ms Palmer-Huggins: I can venture some guesses if you'd like to be entitled to my opinion.

Mr Conway: Yes.

Ms Palmer-Huggins: I'm not speaking on behalf of Nymex. Basically, I think it has to do with the fact that electricity is not a storable commodity, the fact that with oil or natural gas you can actually put it in a tank, put it in the ground, put it on a ship, put it in a pipeline and you can store it, you can hold it. Electricity has very unique properties that we've not seen in commodity trading before, which means that the moment it's produced it must be consumed. You can't store it. I've asked people before about storing it and I get some very interesting answers about batteries and so forth. Nonetheless, I think that has a lot to do with why you're seeing more price volatility.

Mr Conway: If you're right in that guess, and it sounds like a pretty good guess, that would make all the more important the buffering mechanisms or the protection mechanisms that were there to deal with the risk-management issues that you also raised.

From what you can tell, in the first couple of years of actual experience at Nymex with the electricity exchange, are there going to be any additional measures beyond the ones you've taken to cope with the risk management in a very volatile commodity like electricity?

Ms Palmer-Huggins: So far the mechanisms we have seem to be working. Number one, you can actually take physical delivery of the power. In the western contract, which has been trading for two and a half years now, we have noticed people going to physical delivery. As far as we can tell in the two years, we've had no problems. In fact, just to give you a statistic, 3% to 8% of those contracts traded for western delivery actually go to physical delivery. In that respect, that seems to help as well.

The only other thing we've done to help with the volatility is that we have expanded the price limits. In other words, there are certain limits during a day in which the price can fluctuate, and we've actually had to expand those limits for electricity, which we've never really had to do in some of the other energy contracts.

But in terms of security, what we have seems to be working, and we've had no problems with it. As far as I know, there is no current thinking that we need to change those. Now, that's not to say that if something happens and we see a problem, we would change it.

If you want to go back and look at the Gulf War and what happened with the price of crude oil, we've been tested in other commodities, so we feel pretty certain that those mechanisms work.

Mr Conway: I have a final question. On the basis of the two years of experience with the electricity commodity, what advice would you have for a jurisdiction like our own that is beginning down this path in the next few months? You've had two years of experience in this particular market.

Ms Palmer-Huggins: I'd say go educate yourself about risk management and see if it's going to work for you. I can tell you that the state of Texas actually uses these products to manage the price volatility of their royalty production. In that respect, I would probably urge you to educate yourself so that you could see whether this is something that would be useful to you.

1600

Mr Lessard: In part of your presentation you mentioned that maybe the price of electricity would show up on the nightly news, along with the price of oil and the price of gold and one that I haven't liked to watch the last few weeks anyway, and that's the price of the Canadian dollar versus the American dollar. Those are things that I can look at and tell; for instance, if I'm thinking about going to the United States, this is going to affect my decision. But when it comes to the price of electricity and the availability of the services that Nymex offers, how can somebody like me or my wife look at our electricity bill and say, "Maybe we could get a better deal or hedge our risks"? How might we benefit as residential consumers from services like Nymex?

Ms Palmer-Huggins: Quite honestly, I don't know that I would recommend for mom and pop to go out and hedge their electricity requirements, because there are risks involved and we're very conscientious about it. On the other hand, mom and pop sitting back watching television and seeing the price of electricity might then take their electricity bill and say: "OK, let's just compare the two. I can see this is what they're telling me on TV was the price of electricity. Let's go over and look at my bill and let's just see if I'm getting a real good deal or not."

Mr Lessard: That gets to the next question about volatility, which we've seen in early July with the heat wave, in Texas especially —

Ms Palmer-Huggins: It still goes on.

Mr Lessard: — which increased the spot market price of electricity substantially. What happened at the exchange? Were there any failures there? How was that dealt with?

Ms Palmer-Huggins: First of all, I'd like to clarify that the price spikes you saw were in what we call the hourly market, which is not traded on the exchange. We have a monthly product, so we did not see those same extremes that you read about in the press. But we have all the mechanisms in place, like stops. For example, if you hit a price limit, we'll cease trading for 30 minutes. There's a cooling-off time. Then you're allowed to stair-step again. We have certain mechanisms to help the market deal with those cases where there might be extreme volatility within the day. That would be how I'd have to answer that question.

The point is that what was happening there was a number of situations. There were power outages, there was a heat wave and then there was maintenance that was going on at certain utilities. It was basically just your supply and demand: Not enough supply, greater demand, and therefore prices spiked in response to that. But it was

in an hourly market; it was not something that was reflected on the exchange.

The Acting Chair: Thank you very much. We really appreciate your coming before us to present a very effective, very powerful presentation. It's obvious that you're very knowledgeable about the exchange. We appreciate the time you've spent with us. If we were to give out a prize for the person who came the farthest distance to present to this standing committee, I'm sure you would be the winner.

Ms Palmer-Huggins: This is true. I came all the way from Houston, Texas.

The Acting Chair: That's marvellous. Thank you very much. I hope you stay for a while and spend some of those cheap loonies and have a safe trip back.

Ms Palmer-Huggins: I can tell you that I was over at the mall earlier today and spent some of those American dollars.

ENERGY PROBE

The Chair: We'd now like to call upon representatives of Energy Probe, please. Good afternoon, gentlemen. Welcome to our committee.

Mr Tom Adams: Good afternoon, Madam Chair and members of the committee. My name is Tom Adams. I'm executive director of Energy Probe. I am joined today by Mark Mattson, counsel to Energy Probe, and Norm Rubin, Energy Probe's director of nuclear research.

The theme of Energy Probe's oral presentation to the committee today is this: On one hand, there is no serious alternative to Bill 35 as it applies to electricity; on the other hand, changes are required to Bill 35 to ensure regulatory due process in gas and electricity.

We have also made recommendations about environmental protection, financial protection for taxpayers, audit requirements and stipulations regarding the creation of the MO. These are set out in our written materials. Although time doesn't permit us to cover them in our oral presentation, we certainly invite the committee members to carefully review these recommendations, and we also invite questions in these areas or any others that are on the minds of committee members. In the package that we've circulated to the members, there's also an article that I recently wrote in an energy trade journal dealing with Bill 35 that describes some of our praises and concerns regarding the bill.

Energy Probe is a national environmental and consumer advocacy organization with over 10,000 supporters, more than half of whom reside in Ontario. We have been actively representing the public interest in regulatory hearings, in the press and before government committees like this for over 20 years. Since 1982, with the publication of the book *Breaking Up Ontario Hydro's Monopoly*, by our friend and still colleague Larry Solomon, Energy Probe has actively advocated a competitive restructuring of the electricity system. In 1984, the book was expanded, updated and published as *Power at What Cost?* Through the 1980s and 1990s, we battled Ontario Hydro and its allies

at the OEB and before various boards of the environmental assessment process, including the demand-supply plan hearing, and also in the courts on both competition and environmental questions.

The two main themes of Bill 35, separating competitive functions from natural monopoly functions and empowering consumers to shop for power producers of their choice, match the approach that Energy Probe has advocated since 1982. We are strongly in favour. In our view, there is no serious alternative to Bill 35 as it applies to electricity. The legislative and institutional status quo in electricity is not in the public interest. Our electricity system is suffering from a long list of very serious problems: monopoly, unaccountability, inefficiency, profound environmental liabilities and a long history of politicized decision-making, all of which has occurred in the absence of public regulation with due process.

On the other hand, Ontario's natural gas system is sound and successful, although its regulation could use some fine tuning. If I could leave you with one guiding principle, it would be this: Ontario's marketplace in natural gas, including the regulatory role of the Ontario Energy Board, is a jewel that must be protected. Moreover, that successful example ought to be the model we use in creating a marketplace in electricity.

The main problem with Bill 35, in our view, is that it introduces serious flaws into the jewel that is the natural gas marketplace and it duplicates those flaws in the new electricity marketplace. Both of these problems result from the bill's weakening of due process in the Ontario Energy Board's regulatory function. For example, Bill 35, as drafted, does not require the Ontario Energy Board to conduct its proceedings in open public hearings, as is now required. In addition, Bill 35 as it's now drafted does not require, as is now required of the Ontario Energy Board, that the board record its decisions with written reasons.

While some believe that due process by quasi-judicial regulatory agencies is impossible in a marketplace with publicly owned entities like Genco and Servco, we believe due process can be achieved. In the private sector natural gas marketplace it not only can be achieved but in fact actually is being achieved. Without due process, the regulatory process itself risks losing its independence, its authority and its respect, and the marketplace faces a substantial risk of losing its own legitimacy.

1610

Now I'll turn to our specific recommendations, page 3 of the package. Our specific recommendations that I'll speak to, given the time we have available, will focus on regulatory policy questions and regulatory process questions, but there are more if you dig through the package.

The first section of specific recommendations that we're making is to draw the attention of the committee to those specific elements of the existing Ontario Energy Board Act of 1980 where the wording or spirit of those clauses ought to be carried forward into Bill 35 but has not been.

The first specific section is section 14 from the existing act, the one that prevails today. You can read the text of it

there, but the guts of it is that the Ontario Energy Board is empowered through the legislation with all of the procedural mechanisms that the Ontario Supreme Court, now the Ontario Court (General Division), has. We argue that these formal adjudicative powers are necessary to ensure the legitimacy, authority and independence of the Ontario Energy Board. Procedural order, clarity and fairness benefit all parties to the board's proceedings. We would encourage a carrying forward of this specific clause.

The next clause that I want to draw your attention to relates to how the board deals with references that it receives, or order-in-council statements. The board is required to hold a hearing upon notice on these matters. This is a theme that I'll come back to several times or that you'll notice in the remarks several times. We believe that hearings provide an essential opportunity for evidence to be properly tested. References from the minister or order-in-council statements that are given to the Ontario Energy Board are properly subject to public review, both so their implications can be fully understood and also so the minister himself is disciplined by the prospect of this review.

In contrast to the review of references required in the existing Ontario Energy Board Act, the proposed act contains section 26, which allows the minister to issue dictates to the Ontario Energy Board by fiat and not have them reviewed but simply have them implemented. As noted a couple of times in this package, we urge the committee to delete section 26 on the grounds that it undermines the authority and independence of the Ontario Energy Board. We want to maintain the judicial integrity of the Ontario Energy Board process.

The final specific recommendation that I'll be able to get to is a very simple statement that's found in the original Ontario Energy Board Act, and that is, "Every proceeding before the board shall be open to the public." This is really a very essential element of the energy board's mandate and one of the reasons it has been so successful in the gas arena. Bill 35, as it's currently proposed, does not contain a guarantee that members of the public can observe and participate in the regulatory process. Public utilities ought to be open to public scrutiny, and the regulatory process for public utilities the same. Methods of regulation or self-regulation behind closed doors that might be suitable in other markets, private markets, such as those that are regulated by the OSC, are not appropriate for application by the Ontario Energy Board. Without a clause matching 15(4), which says, "Every proceeding before the board shall be open to the public," it is possible that proceedings dealing with public interest matters might occur in secret, behind closed doors, might be influenced by factors that might not be appropriate.

In light of the time, I'll draw your attention to a couple more just in outline form. We think it's essential that the energy board, when it brings down a decision, publish its reasons with that decision, in the normal way in which the courts usually decide when they explain the reasoning; and of course it's required in the old act.

The final one that I will leave to your attention is this requirement in the existing act that when natural gas utilities are being sold, or when there is a change in disposition of the assets, the energy board must hold a hearing and submit a written report and opinion to the cabinet. This is a function that we think ought to carry forward and apply both to electricity and to gas.

With that, I will open it up for questions.

The Chair: Thank you very much. We have seven minutes remaining for questions from each caucus. We will begin with Mr Conway.

Mr Conway: Tom and colleagues, thank you for your presentation. I want to begin with section 26 of the Ontario Energy Board Act, which you make specific reference to. As you understand the evolving world, why do you suppose 26 is there?

Mr Adams: You're referring to the new 26, not the old?

Mr Conway: Yes, the new 26.

Mr Adams: The old 26 we like. Perhaps Mr Mattson can help you.

Mr Mark Mattson: I am Mark Mattson, counsel to Energy Probe. The only reason I can see the new act contains that section with respect to policy directives is because the old act required the government, if they were issuing a Lieutenant Governor in Council order, to first put that forward to the Ontario Energy Board to have a hearing and then that opinion would go back to the government, such that if the government decided they were going to overrule or overturn the decision of the Ontario Energy Board, they would do so at their own peril because there might be a sense of embarrassment etc that came out of a public due process forum where decisions and reasons were issued. The only reason I can see section 26 is to avoid that embarrassment, or that potential embarrassment, that may exist.

Otherwise, as you are aware, Mr Conway, for the last 20 years gas regulation, for example, has had no government directives or influence and has functioned not only well but exceedingly well. In my 10 years before the Ontario Energy Board, I have not seen government interference in that regulatory process. If the government wanted, for example, to allow British Gas to buy Consumers' Gas, they first have a hearing before the Ontario Energy Board. The board issues its recommendations and undertakings and the government then would either adopt them or adopt them in part.

This section just exempts them from that requirement. I think it may be due to potential embarrassment or whatever, but it certainly allows them to go ahead without the board's approval.

Mr Conway: It's followed, you see, by section 27, which reads, "In order to address the abuse or possible abuse of market power in the electricity sector, the minister may issue, and the board shall implement...." We've had some deputies — in fact, Hydro Mississauga was here today and I thought they made a good argument that since this is not the gas business, this is the electricity business, particularly over the next few years, as we move

to the new world order, there are going to be some potentially significant unknowns. I won't get into the details of Hydro Mississauga's presentation, but they basically suggested to us that you're going to have to be a very wise person to anticipate all the potential contortions and diversions. I think that is a fairly reasonable bit of advice to the committee. Because there are going to be some very significant policy questions here, is that a fair flexibility to leave Her Majesty's government?

Mr Mattson: Mr Conway, this is the Ontario Energy Board Act which will apply to gas and electricity.

Mr Conway: No, I realize.

1620

Mr Mattson: Second, because it will require a great deal of knowledge and wisdom in order to help provide oversight to this very important energy market, one wonders why you wouldn't leave that to the Ontario Energy Board, which has due process in place, full disclosure, independent decision-making and binding decision-making, as opposed to leaving it open to a political process that may become more prone to political influences, backdoor lobbying etc.

The Ontario Energy Board, which has a 20-year history even with electricity, is really in some way being stripped of that and being told, "Now you're going to be a more of a pawn of government; you're going to take your orders from government; we'll tell you what to do," as opposed to the old method, which was, "Let's give it to the board; let's have a public hearing; they will give us their decision; we don't have to follow it in electricity," and the act didn't make you follow it, but at least you had due process before government made a decision on any issue. This will exempt you from that. It's just, "You shall implement the policy decision," and the board does not have a chance to —

Mr Conway: I think you make a very good argument. I tell you, I've had it with the old order. One of the parts of his policy that I like most of all is that an unregulated monopoly is being replaced by a regulated competitive marketplace and I'm hopeful that will provide some better discipline that we have seen and that you have rightly complained about as a group for several years.

Having said that, it's not gas, it's electricity. If it were just gas, I would totally agree with you, I suppose. It's just that I'm worried that we've got some big surprises around the corner and I guess I'd like some help. How do the politicians deal with those situations that may develop that are highly political and that shouldn't be decided, can't be decided in some ways, by a regulator? Or is that just an unfounded worry?

Mr Adams: No, I think it's a sound concern. But in the marketplace that's envisaged in Bill 35, we've got the government as shareholder. As a shareholder, it can control its own assets. The cabinet has the power to direct its own assets. It doesn't need to yank the chain on the Ontario Energy Board to get its will imposed. To do that would devalue the quality of the regulatory process. It has the mechanism at hand.

Mr Conway: That's a good point. Thank you.

Mr Lessard: One of the things I think you didn't get an opportunity to mention in your opening remarks — I don't know if you did this because I stepped out for a couple of minutes — is with respect to the environmental protection rules. I want to give you an opportunity to go through that area because that's something that I'm quite interested in.

One of the issues that we've been dealing with, and that we heard about actually with a great deal of force, was in Ottawa from the Atomic Energy Control Board which talked about the requirement for there to be sufficient reserves for decommissioning of nuclear plants and disposal of waste. In fact, they suggested to us that before even the transfer of assets to the new Genco from Ontario Hydro, there would have to be a new licence issued and therefore this would have to be evaluated by them. They said that was their jurisdiction. But in your suggestions here you seem to suggest that the provincial government should have some jurisdiction as well.

Mr Norman Rubin: Perhaps I can speak to that. I'm Norman Rubin. In our view, the Atomic Energy Control Board is decades late in their concerns over decommissioning and waste disposal funds.

Mrs Johns: Thank you very much.

Mr Rubin: Perhaps we can continue what is actually a long-standing tradition of Ontario parliamentary committees raking the Atomic Energy Control Board over the coals and making recommendations for the federal government and regulator, which perhaps a decade or two later, gradually inch toward reality.

One of the possibilities in this field, and there's also a long tradition of Ontario parliamentary committees recommending this, is for the Ontario government to take some responsibility for the environmental and health impacts of Ontario's nuclear facilities. There is no restriction, legally or constitutionally, as far as we can see on overlapping jurisdictions for these things. As you may know, in reality we've gone the other way. Any staff the government used to have that knew anything about this are mostly gone, and that's too bad.

What we have here is a situation where I've corresponded with the president of the Atomic Energy Control Board over a speech she gave recently to the Canadian Nuclear Association in which she said that up till now, and including now, the environmental cleanups of the nuclear reactors are completely guaranteed by the taxpayers of the provinces under provincial guarantees. First of all, I've asked her for legal opinions on that and she's provided none. Second of all, to the extent that those guarantees exist, they are guarantees in which our great-grandchildren may or may not be obligated by law to pay to clean up our mess. The Atomic Energy Control Board, which has insisted that uranium mine operators and others provide real funds and bonds and real provisions to make sure that the funds are paid by the right people, has done nothing to ensure that is the case with the huge liabilities. In other words, they're penny wise and pound foolish on this. They've been completely asleep at the switch.

The good news is that Bill 35 and the rest of the reform of the electricity system and the threat that British Energy or somebody will come in and inject private capital into the nuclear field has awakened the Atomic Energy Control Board. That's the good news. They now see that there might be a problem. What they have failed to see still is that there is a problem. There's no money now. Hydro didn't set aside any money. The government hasn't set aside any money. The money is gone. Ratepayers have paid for a small fraction of the cleanup, some \$2.5 billion out of what is now estimated at \$18.7 billion in last year's dollars. We've paid that much at least. The problem is it's all gone.

Mr Lessard: It's therefore going to become part of the stranded debt or residual stranded debt, I'm assuming, and will have to be covered somehow.

Mr Rubin: It is a liability and it is stranded in the sense that there isn't much hope that the revenues from the nuclear generating stations can in fact fill that bag with cash reliably before they retire. That depends on a number of assumptions. But however that bag that we plan to pass on to our kids and our grandkids is going to be filled with gold to do the job, it must be filled with gold. We have to provide the funds. It is immoral not to do so. We have some mechanisms in mind, but somehow or other it is immoral, and we must recognize that it is literally immoral, to leave the junk and the garbage and the poisons without leaving the corresponding funds. That must be done now. This is a perfect time to do it because there are balls in the air in this juggling act, in the electricity competition act, and thank heavens we're all being awakened to this.

Mr Adams: I'll just add that in our package at the bottom of page 5 there's a paragraph describing what we think needs to be done in wording.

1630

Mr Baird: Thank you very much for your presentation. Let me just say at the outset it's certainly very specific and gives us a lot to pause and reflect on over the course of our deliberations. I want to thank you for the specificity pertaining to consumer protection because in this case it's not just consumer protection, it's taxpayer protection as the taxpayers are the shareholders.

I have some questions for you on page 6 with respect to the provincial guarantee. Obviously, the province would continue to guarantee the existing debt, whether that was assigned or residual stranded debt. I'm just curious what would give you cause and fear with respect to the province being in a position where they might be liable for any new borrowing undertaken by Genco or Servco in the future.

Mr Rubin: Perhaps I can take one crack at it. I believe there are two concerns and one is kind of legalistic and the other one is logical. The legalistic one is the concern that if the Ontario cabinet has exercised control over Finco, the new financial company, and directed its borrowings, then even if the bonds they issue do not say on them that they're a general obligation of the province of Ontario, there is concern that will be taken to be an obligation, and should Finco be in a position where, God forbid, it has to

default on some loans, there will be successful action against the province to honour those obligations. That's the legalistic one. Perhaps Mark or other lawyers can bat their heads over that.

Let me also address the logical one. This concerns new, unguaranteed borrowing, which presumably will be for new ventures by Genco and Servco, and whether that new borrowing, expressly as written on the bonds and enshrined in law, is subordinate to the existing 30-billion-odd dollars' worth of debt which is guaranteed by the taxpayers of Ontario. If it is not expressly made subordinate, the way a second mortgage is made subordinate to a first mortgage, then the concern is that all new borrowing becomes majority guaranteed by the taxpayers of Ontario.

Let us take a hypothetical example. Servco decides to buy a phone company and there is new borrowing not guaranteed by the province in order to make that happen. Any new venture that involves new borrowing, should there be a shortfall and all of that debt is equivalent in its claim, then should a new \$2-billion purchase result in a \$2-billion shortfall because it's a stupid purchase, everybody takes the bath. All bondholders, most of which are guaranteed by the provincial taxpayer, would then take a bath proportionately. In other words, the idea of taking the provincial loan guarantee away is so that full commercial responsibility will apply to new expenditures, and our concern is that may not happen unless new borrowing clearly is at its own risk.

Mr Baird: My understanding is section 52 — I'm concerned about this; you've obviously given a great deal of thought to it — would limit it, but if you've got anything that you could contribute or send the committee following this presentation to help support that, we'd certainly we would all welcome it to consider during our deliberations after the hearings are over. If there is anything else to support that, we'd certainly —

Mr Rubin: I can just mention that in a recent briefing of finance officials, for example, they said they were still trying to decide whether or not they would make the new borrowing subordinate to the old borrowing, and they said they basically had — they didn't call it a conflict of interest, but there are conflicting interests. To the extent that the government wants to maximize its shareholder interest in the new companies, it would let them roll it in together, and to the extent that it wants to protect taxpayers from the call on the provincial loan guarantee, it would make the new borrowing subordinate. Anyway, that's my main basis for confidence that there's nothing in this act that eliminates the question and the concern.

Mr Gilchrist: Thank you, gentlemen, for your presentation. I'd like to pursue something Mr Rubin included in his comments, and it was extraordinary. I appreciate your candour and your honesty, and not just because we happen to agree with you. But it would appear your indignation is very well placed that after 40-odd years of sitting on the sidelines as a paper tiger, for AECB to now have the extraordinary gall to come before us and say that because we've opened up this prospect in terms of a change of direction, somehow they've got the teeth to really wrest

nuclear issues under control. Had you been privy — and maybe you've seen a copy of the presentation Ms Bishop made to us where she said, "I might even withhold the licence if you want to bring in a new equity partner." It had nothing to do with the business plan, nothing to do with the actual operation of the plant but, "If I don't like the shareholders you're dealing with, I have that power and I will use that and wield a mighty sword."

My question to you is this: If in fact it is the perception of that federal agency that they are now, and presumably always have been, the final guardians between us and a nuclear holocaust — those nuclear plants — what role do they share financially in the absolute abrogation of any fiscal management in those 40-odd years?

Mr Rubin: Let me try to answer that. First of all, God forbid that anybody start filing those claims, because it will mean that we have the holocaust and the money is not there to make it good. That's what would give rise to claims saying exactly who is responsible.

Mr Gilchrist: Let's even look at the decommissioning, the fiscal holocaust.

Mr Rubin: That's right. It might happen when it's time to decommission, and the neighbours insist on some decommissioning and there's no money to do the job. That could lead to such claims, as I said. First of all, let's be clear, God forbid that should ever arise, and this committee and this government forbid that should ever arise.

Second, in my view the responsibility to pay for cleaning up Ontario Hydro's nuclear mess rests with the owners of the generating stations, the customers of the electricity from the generating stations and those who signed the OK to build and operate the nuclear generating stations. That latter category does include the AECB.

Let me make another point. I do not fault the AECB for slowly becoming the regulator I've always tried to urge them to become. It is not the problem that they are now trying to flex their muscles and trying to find their muscles and reaching into a scabbard to see if there's a sword here; the problem is they haven't been doing it enough.

I don't want to fault them for finally saying the legitimate, important principle: that there be cradle-to-grave secure funding for cleaning up the mess when you're done and that that funding be there when you begin. That is their principle. They apply that principle widely to little private sector polluters. They just haven't applied it to the big ones. I don't fault them for now saying it's time to apply that to the big ones. I do fault them for being a bit tardy.

Please don't take this as criticism — I yield to no one in my criticism of the AECB — but what they are doing here is certainly a step towards sanity. For them to be concerned that new developments may make that empty bag harder to fill with pieces of gold is a legitimate concern and it depends very much on how a future deal might be structured.

Mr Gilchrist: But you'd agree that their timing is extraordinarily opportunistic.

Mr Rubin: On the other hand, this is the first day of the rest of our lives and the question for our grandkids is

how are we, those of us who are around today, going to fill that bag with money, not even necessarily who mostly is at fault for the fact that it's still empty? I doubt you can make a case for AECB being more at fault than Hydro or Hydro's owners.

Mr Gilchrist: It's not a question of more or less value, it's just that as somebody who grew up believing all through my adult life that AECB was that regulator they profess to be today, I was very disappointed to get our hands on the cookie jar three years ago and see the true state of affairs.

Mr Rubin: Well, they're not today either.

Mr Gilchrist: Still not. Thank you for your candour.

The Chair: Gentlemen, thank you for coming before our committee. Your organization has been astute and diligent in its review of this industry over the years and we appreciate your advice. I know we'll read your brief very carefully.

Mrs Johns: Madam Chair, just on a point of clarification: In section 26 of the act, what the government was trying to do — I'd like Mr Adams to review this and see if he thinks he would like to restate his case, or if he still feels strongly about it. Maybe he could circulate a document after. In an evolving market, we knew there were going to be things in the transitional market, as Mr Conway suggested, that we were not sure about, so we wanted to leave that open. We believe this section adds transparency, because as we prepare directives, of course they're available to the public and they're approved by cabinet.

What happened in the past, we believe, was that the Ontario Energy Board could provide something and we would accept it or reject it. That was the way the system went. Whereas now we're making very clear what the policy directives are, and that's available to the public. Perhaps you could consider that important and maybe get back to us.

The other thing the legal beagles back here are telling me is that some of the directives you put into the first two pages of your section are covered under the Statutory Powers Procedure Act. I wonder if you would have a discussion with them afterwards, lawyer to lawyer, and find out if they actually have covered your concerns and get back to us with that. You can't really comment, but if you could send us a letter, that would be great.

1640

CITIZENS FOR RENEWABLE ENERGY

The Chair: I now call representatives from Citizens for Renewable Energy, please. Good afternoon, sir. Welcome to the committee. Nice to see you again.

Mr Siegfried Kleinau: My name is Siegfried Kleinau. I am better known as Ziggy. I am the coordinator of Citizens for Renewable Energy. Our organization certainly isn't as well known as Energy Probe, but we've only been around for two and a half years, so keep that in mind when I make my presentation here on behalf of the members and directors of Citizens for Renewable Energy.

Thank you very much that we were invited to make this presentation. Since the inception of CFRE, Citizens for Renewable Energy, our organization, now comprising over 1,000 members, has been heavily involved in promoting energy conservation and replacement of conventional power generation with safe, clean and sustainable renewable-source-generated electricity.

Shortly after our incorporation in January 1996 we made a well-received presentation before the Advisory Committee on Competition in Ontario's Electricity System, the Macdonald committee. We were pleased to see the commission's report contain the statement:

"We do not argue that market forces will, unaided, produce socially desirable outcomes. Where environmental objectives are concerned, similar to other public policy issues, the advisory committee believes that the government will have to stay very much involved.... The advisory committee believes that the process of restructuring...must be accompanied by consideration of the most appropriate regulation or other instruments to secure the protection of the environment and, specifically, to support energy efficiency and the introduction of renewable energy technologies."

This was on page 91 of the report.

On the same page the report states, "The advisory committee supports the use of the transmission and distribution systems as a source of collecting levies to support important public policy objectives, including those related to the environment." This is where our efforts seem to be reflected: to free up monies to help consumers cut energy waste and so benefit their pocketbook in a roundabout way.

We would dearly like for the government to see the benefit of establishing an energy efficiency agency or department within the bounds of the Independent Market Operator, or IMO. This body would be entrusted with overcoming the inherent conflicts between utility profit maximization and the achievement of cost-effective energy efficiency in a competitive market. Delivery of efficiency services would be left to an open ESCO market involving private as well as green community ESCOs and municipalities.

Ontario Hydro itself embarked on an in-house energy efficiency program and proudly reported in the first volume, number one edition of *Energy Matters*, from March 1996, that a complete retrofit of the lighting system in their head office at 700 University Avenue has cut energy use by 5 gigawatt hours, or about 29%. They explain that is approximately the annual energy use of 500 homes.

In the same publication they also expand on other benefits beyond conserving energy: "Less energy use also means less production of greenhouse gases, acid gas and ash. That, in turn, means Ontario Hydro is producing less emissions for every kilowatt hour of energy delivered to its customers. In addition, there are 'upstream' environmental benefits, such as less use of non-renewable resources, less mine wastes, and a corresponding decline

in the environmental impact of fuel recovery, production and transportation."

I believe that sheds light on what is really involved. Therein lies the whole story. We have to see the issue in its whole spectrum. We sincerely wish that this bill will have provisions to force conventional power generators to contribute a certain percentage of their profit towards these energy efficiency projects.

In our presentation to the select committee on Ontario Hydro Nuclear affairs in Kincardine last October, we pointed to at least two of Ontario Hydro's programs that promised substantial power savings from conventional suppliers. These were abandoned well before their expiry date. The reason was the cost and potential asset-stranding implications.

We cannot stress enough that the stranded debt, which stems almost entirely from their nuclear division, should not be allowed to impede energy conservation and integration of new renewable energy generation projects. This stranded debt should be dealt with as expeditiously as possible before competition comes in. That involves stopping all expenditures on the nuclear rehabilitation and recovery plan which would greatly increase this stranded debt. Any expenditure towards restarting the worn out Bruce A and Pickering A reactors is a blatant subsidy on the backs of Ontario taxpayers.

We need dedicated wording in Bill 35 to facilitate the forming of green power co-operatives that will invest private funds in stand-alone projects like the Toronto Renewable Energy Co-op, TREC, for example.

Rural communities stand to be left without bargaining power, while bulk buying municipal electric utilities would benefit urban customers. These direct rural retail customers of Ontario Hydro, while still guaranteed the rural rate assistance, would need the possibility of coming together with like-minded power consumers to form their own associations. This would help to achieve their goal of producing power which is protected from future rate increases through upfront investment and private ownership and does not include fuel processing and waste disposal costs as in conventional power generation.

It would be to the benefit of generators and consumers both to allow free access to transmission lines to distribute this green power. For other rural power users, it should be possible to have their own grid-connected power generation from photovoltaic cells and small wind turbines in a legislated net billing installation that would prevent the need for their own battery storage. The government, through associated legislation, should make low-interest loans and tax rebates available to assist these rural consumers, especially farmers, in financing their power installations. This again would initiate a whole new industry with many hundreds, if not thousands, of new, long-term job-creating potential.

In the white paper issued last November, the government expressed concern about the rapid restructuring in the electricity field going on in neighbouring jurisdictions. It expressed quite eloquently fears of cheaper electricity prices luring industry and jobs out of the province. We

have to impress on government that creating a new industry in this province that would need very little support to establish itself is the solution to both of these envisaged problems.

1650

As the title of this new bill puts the emphasis on creating jobs, let's follow Denmark's example where manufacturing wind turbines has created employment that has more than doubled in three years and has overtaken the fishing industry as the largest employer in this European country.

Job creation of this kind could bring employment to diverse areas of Ontario. It is not centralized like building huge nuclear power plants, benefiting only certain small localities. Many one-industry towns in northern Ontario could be diversified into manufacturing components for wind and solar energy generation. Up until now, practically all these components have had to be imported. Government has to do more to bring these job creation measures into effect, and Bill 35 is a magnificent tool to do it by breaking down barriers against supplying the public with clean and safe electricity from renewable resources.

While paying lip service to integrating renewable energy technology into its generation mix, Ontario Hydro has done all it could to discourage private investment in this clean and safe source to the detriment of job creation in this province. We include correspondence from Mr Rod Taylor of Ontario Hydro in our submission.

Power Workers' Union locals have expressed their interest in job transition to the renewable energy sector. Nuclear phase-out does not mean job losses but new job opportunities. It is high time that new legislation like Bill 35 opens up the transmission lines to people who want to do their part to mitigate greenhouse gas emissions and lethal radionuclide pollution of air and water to help Ontario keep its promise to reduce emissions as outlined by the Premier in personal correspondence dated January 23, 1997, and we attach a copy of that.

Our recommendations to the committee are as follows:

In keeping the overall objective of fairness and transparency to guide the new Energy Competition Act, 1998, we want to see the user-pay principle put at the top of the agenda.

We recommend introduction of a renewable portfolio standard, RPS, of at least 5% from new renewable energy sources, excluding large hydroelectric, to be met by generation companies or retail power suppliers one year after introduction of this bill, with 1% increases each year hereafter.

We recommend that a system benefits charge, SBC, be legislated to provide funding for conservation, efficiency and renewable energy research and development and be administered through an energy efficiency agency integrated in the Independent Market Operator.

We recommend that the stranded debt be paid back by all electricity users on the 60% of their hydro bill that represented the portion from nuclear power generation, but

that there be no stranded debt charge on consumers of new, renewable and small hydro-generated electricity.

We recommend that emission caps be set not only on greenhouse gas emissions but also on tritium emissions to meet recommendations by the Advisory Committee on Environmental Standards, ACES, in their 1994 report, A Standard for Tritium, for drinking water quality; as well that carbon-14 releases from nuclear plants be capped in accordance with recommendations of the Advisory Council on Radiological Protection, ACRP-14, July 1995, to protect public health.

Last but not least, we need to see all the external costs, social and environmental, included in all pricing to make competition fair and transparent. The Ontario Energy Board and the IMO should have full power to enforce targeted legislation.

When will this society ever realize that the steam power generation age is completely outmoded and superseded by new technology, and that with the help of advanced electronics a new age of power generation has dawned, bringing the promise of keeping our world from the brink of environmental destruction? We better start realizing this advantage given to us by nature and put it to work without delay.

We really appreciate the attention given to this presentation and sincerely hope our recommendations will be taken into serious consideration.

The Chair: Thank you very much. We've time for questions, four minutes per caucus. We begin with Mr Lessard from the NDP.

Mr Lessard: Thank you very much for your presentation. It seems as though there's a strong consensus among those who are involved in the environmental area that we need to pursue renewable portfolio standards and system benefits charges within the legislation. Do you think that the government's objective, and they'll tell you this as well, that this is a bill that's going to provide opportunities for those who want to generate and market green or renewable energy, is really going to happen if there isn't some requirement in the bill for renewable portfolio standards or systems benefits charges? Do you think it'll really happen?

Mr Kleinau: The problem, Mr Lessard, is that with open competition it always seems that the lowest price wins and, in that case we have to realize that the renewable portfolio is something that protects the initial high investment in these clean and safe power sources, and that we have to have a regulation in this bill where the government says: "We give all these people who are really demanding a clean and safe energy source be provided, even if they have to pay a small premium on this. That is there and none of the big competitors can overrule this."

Mr Lessard: Do you think there's a limit as to how much people will pay for green or renewable energy and, if so, how much do you think it would be?

Mr Kleinau: There has been quite a substantial survey done by Ontario Hydro under the director for the renewable energy technology division, and it was remarkable how people responded to that, that they would definitely

be willing to pay a premium and that they would certainly be willing to pay substantially more just to be assured that they could help mitigate the problems of greenhouse gases and the climate change.

Mr Lessard: In the definition of what you refer to as renewable energy, are you familiar with the environmental choice program definition and, if so, is that one you would agree with as far as how to define renewable energy is concerned?

Mr Kleinau: I'm fairly familiar with the green logo, but in our perception it definitely needs another look. If we say that, for instance, natural gas is a clean source that would benefit the environment, I think we're going a little bit beyond the original green logo certification, because we have to look at where natural gas comes from, how it is treated and what kind of problems it creates out in the gas fields with the flaring and all these other cleaning processes.

1700

The Chair: From the government, Dr Galt.

Mr Galt: Thank you for your presentation. This is the third or fourth time, I think, that I've been on a committee that you've come before, and I congratulate you on your concern for the environment and for your presentation. I note that you're the first one who pointed out that presently it's almost impossible, if not impossible, to get green power on the grid with Ontario Hydro. Just to bring to your attention, it's very easy for Ontario Hydro presently to import very dirty power from the US, from the Ohio Valley, where there are some pretty dirty coal-fired plants. This bill certainly is moving us in the direction, at least I think you would agree we're moving in the right direction, maybe not quite as far as you'd like to go, but certainly we're moving along there.

I'm curious, do you consider as renewable energy a hydraulic plant that's on a river that has not been dammed up, it's just catching the water going down, because 25% of the power created in Ontario now is from hydraulic plants? That's all inclusive, not just the ones I've described. How much power do you think could be produced in Ontario from renewable energy? Could we replace all the power with renewable energy? Is that potentially possible?

Mr Kleinau: We have research from the Worldwatch Institute, which is a very respected research institute in Washington. It's independently funded. It has no direct, big sponsors. They claim that Canada, of course including Ontario, is one out of the five countries in the world that potentially could use wind power to completely replace all the conventional power.

In regard to your question about water power, hydraulic power, there are all kinds of small hydraulic stations that were actually closed down by Ontario Hydro in this province and could certainly be brought back on stream. Ontario Hydro figured, "If we get all this cheap electricity from nuclear plants, why should we keep up the small" —

Mr Galt: How much more do you think it would cost in the rates for me to buy green power in the future?

Mr Kleinau: For instance, in the project that was put before Hydro by the wind turbine consortiums, they said they could produce it with about 9.5 to 10.5 cents a kilowatt hour. That certainly is not that much above what we're paying nowadays for our power. We're paying eight cents a kilowatt hour from the mix that Ontario Hydro puts on the wires.

Mr Galt: Certainly the Ontario government's very empathetic to some of the concerns you've expressed in your paper. From reading your paper and listening to you, and I'm sure you've been through the bill, do you see anything in the bill that would interfere with some of the objectives you have for the environment?

Mr Kleinau: We certainly don't like the idea of emissions trading, which is something that actually gives a licence to pollute. We're concerned about that. We're concerned that the regulatory bodies mentioned in this bill don't have enough regulatory powers to really promote clean and safe energy.

Mr Galt: I should explain that with emissions trading it would be ratcheting down each time and it would be within a given airshed. It's not simply a licence to pollute but rather ratcheting down the total amount of emissions that would be occurring.

Mr Kleinau: Yes, but still —

The Chair: Excuse me. We're going to move now to Mr Conway from the Liberal Party.

Mr Conway: Mr Kleinau, thank you for your presentation. I have just a couple of questions. First, you dealt I think with Mr Lessard, but I wanted to expand a little bit upon it. You say at the conclusion of your brief, "When will this society ever realize that the steam power generation is completely outmoded, superseded by new technology?" Do I take it from that that you wouldn't favour the kind of cogeneration proposals that the committee was hearing about yesterday in the Samia-Lambton area?

Mr Kleinau: I'm glad you brought that up. I certainly was hoping this would be touched on. To make electricity, up until now what we've had to do is make steam to drive a turbine and then this turbine drives a generator. What we have to look at now is that we have the fuel cell coming onto the market very, very quickly and hydrogen would be a good fuel to run this fuel cell. Of course, hydrogen can be made without generating steam first because we have the solar and wind turbine electricity. What we're thinking is that the cogenerating facilities would, in our minds, certainly help to bridge the gap until we could bring in this new technology with full capacity.

Mr Conway: The second question follows up on an exchange that you had with Dr Galt about the apparent appeal of renewables, and I don't think there can be any dispute about that, with perhaps a caveat that I will add on behalf of the scores of my constituents who live alongside what we used to say were rivers harnessed to produce electricity. But that harness fits very unpleasantly on a lot of shoulders at certain times of the year. I just wonder, is there anything we ought to do in the marketplace to put a credit or a price on the evidently negative aspects that

attach to certain consequences from generating electricity through hydroelectric means?

1710

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

The Chair: Now calling representatives from the Canadian Union of Public Employees, Ontario Division, please. Good afternoon and welcome. Before you begin your presentation, please take the time to introduce yourselves formally for the Hansard record.

Mr Sid Ryan: Good afternoon and thank you for the opportunity. Joining me today are Doug Allan, a researcher for CUPE national; and Jim Keenan, a CUPE staff rep and also the coordinator of our electrical utility committee. I'm Sid Ryan, the president of CUPE in Ontario.

The Ontario division of the Canadian Union of Public Employees is pleased to submit our views on the Energy Competition Act, Bill 35. With over 170,000 members in our union in Ontario, and in Canada we've got 450,000, we work and live in every county, district, town, township and city from one end of this province to the other. We provide services to the public. We work for municipalities, school boards, social services, hospitals, nursing homes, airlines, the provincial government and a multitude of other employers. Thousands of CUPE Ontario members work in the electrical utility industry.

Until now, the public sector has played the dominant role in the Ontario electrical utility system. For decades this system was an important cornerstone of prosperity in Ontario, providing inexpensive electricity. Throughout this century the primary instrument for industrial development was the publicly owned Ontario Hydro. The public power system was supported by all political parties.

Now the Conservative government wishes to radically change this system to develop a new system based on business corporations. Not surprisingly, the main exponents of this new system have been Ontario business elites. If there are any beneficiaries of these changes, they will be the first. As participants in the electrical utility industry, they will realize new areas to make a profit — heretofore, electricity has been produced at cost — and as electricity buyers they will be in the best position to extract lower prices.

For working people the possibilities are less rosy. As electricity consumers, they face the prospect of being stuck with Ontario Hydro's stranded debt, new taxes and much less bargaining power than the big corporations. As workers in the industry, jobs may be eliminated, contracted out or privatized.

We are pleased to see that the government has listened to some concerns expressed by workers and has not implemented policies advocated by some right-wingers, for instance, the elimination of successor rights, restrictions on collective bargaining and the immediate privatization and pulverization of Ontario Hydro. We note, however, that we will mobilize if the government tries to implement such changes at a later date through regulations or other methods.

Mr Kleinau: For one thing, we never really would like to see any rivers dammed up to generate electricity that way. It would just be the diversion of a natural flow. I just recently talked to a good friend of mine at Bancroft and he said, "Oh, the York River up there, there are at least five or six different places where the flow could be used to generate electricity." Mind you, not a very big amount, but every little bit helps and it's a clean source and it would not hurt fish or anything.

Mr Conway: The point I make in that connection is simply this: Obviously hydroelectric resources are important and on balance I think quite positive, but they are not entirely benign. There are environmental costs associated that sometimes can be very nasty. I just make the point that I have yet to see in this whole debate a source — but you may have identified one with the hydrogen technology — for the generation of electricity that is absolutely benign. It seems to me that every one of them has a benefit and a cost and what trustees of the public interest have to do, it seems to me, is just balance in some reasonable way the costs versus the benefits.

Mr Kleinau: We have to really look at that. With renewable energy from wind and solar we don't have to make any fuel. We don't have to go through this long process of mining the fuel and concentrating it, transporting it, all these long processes that have to be done to make the steam to generate the electricity. Here we've got countries like Germany going full blast into using wind energy and solar via the means of the government helping out people who are really interested in doing it.

Mr Conway: I think you make a very good point, but let me just respond by saying that this morning we were over at the Clarkson central operating station, or whatever it's properly called, and we were reminded that on a day like today Ontario will require something in the neighbourhood of anywhere between 17,000 and 22,000 megawatts of electricity. That's what it apparently takes.

Accepting that we need to improve our general behaviours and develop more attractive technologies, how realistic is it to imagine that we can fuel a modern economy like Ontario that has the requirement of thousands of megawatts of electricity entirely through the most attractive of means?

Mr Kleinau: Let me just remind you that Ontarians and Canadians are really energy hogs. They are really in the where they have to come to the point where they realize there's a lot of waste that has to be cut out. At that point, if we address that kind of situation, then we can look at replacing that electricity with clean sources.

The Chair: Good advice for us all to take to heart, Mr Kleinau. Thank you very much for coming before us with our advice. We appreciate it.

In this presentation, most of our comments will focus on the social consequences of the proposed legislation that we are most familiar with, given our time limits.

One gets the impression that the government does not want to say the P word, but make no mistake about it, this government would sell Niagara Falls if they could. This legislation is the stalking horse for broad-based privatization in the electrical utility industry. Some parts are openly revealed. The private sector will move into the retail end and initially some parts of generation, but more will come later.

As some have noted, Bay Street is salivating. We expect Wall Street will take more than a passing interest as well, and so the corporate types should. In Britain, when Margaret Thatcher sold off the electrical utility industry, profits went through the roof, so much so that in July 1997 the new Labour government put a windfall profit tax on the former state-owned companies such as British Energy PLC. Instead of enriching the Exchequer, the profits had been passed on to private shareholders through larger-than-usual dividends and to top executives through embarrassingly high pay increases.

We are concerned that the move to a more corporate-run system will be accompanied by job loss in a number of sectors in the industry. Such was the case when key regulatory controls were removed from the Canadian airline industry, first in 1984 and then in 1987, in the name of the market and competition. The result has been the loss of well over 10,000 jobs. While competition may have been the stated goal, just two airlines effectively control the Canadian domestic airline market now, and despite sharply rising average fares, massive losses have been run up and there has been a decline in service to some regional centres.

In the British electrical utility industry, the overall number of jobs was cut by 27,000 in the early 1990s following the introduction of privatization and competition. As we will discuss later in our presentation, the introduction of business-oriented reforms in the New Zealand electrical distribution sector resulted in significant job loss.

While the barons of Bay Street may be secretly, or in some cases not so secretly, pleased with this outcome, we are not. Through many years of unionization and collective bargaining, workers have made jobs in the electrical utility industry desirable, well-paid positions, jobs you can raise a family with. Just as important, these jobs and the wages that came with them helped build local communities throughout Ontario, creating work for others in every corner of the province.

The creation of good jobs in the electrical utility industry also ensured an experienced, dedicated and expert workforce that ensured reliable service. The importance of this was never so apparent as during this winter's ice storm, where power was restored thanks in large part to the dedication, expertise and hard work of Ontario electrical utility workers.

Cuts in these jobs will deplete this resource and erode the safety and reliability of our electrical power system.

Very likely, at least some of the wages lost to these cuts will be diverted to corporate profits and pay increases for top executives, money much less likely to be spent building local communities and families.

Mike Harris promised tax cuts, not tax increases, so it's curious to see that at the centre of this reform are substantial tax increases. For the first time ever, public utilities will have to pay business-like taxes. In part, the taxes and charges will pay down the stranded debt that this legislation will create, but with their market power, large corporations will likely have an ability to force down the price they pay for electricity in the market system, in effect avoiding their share of the stranded debt. The general public will have much less market power and will bear the full brunt of the stranded debt, contrary to what the government has suggested. Furthermore, there is no commitment to cut the new taxes once the debt is paid off. The new taxes could go on and on and on. This is not surprising.

The introduction of these new taxes will help the private corporations moving into the electrical utility industry. They won't be at a tax disadvantage compared to the remaining public industries. Indeed, we are very concerned that the tax on gross revenues that will be placed on municipal electrical utilities will put them at a competitive disadvantage compared to private sector utility corporations that have multiple opportunities to hide profits and avoid taxes. Corporate tax dodges are infamous, but it is after all pretty hard for municipal electrical utilities to hide gross revenues.

The new taxes are a significant burden to bear and build new costs into the system that will be borne by the consumer. This cost increase will be compounded by the higher cost of borrowing money that private businesses face compared with organizations backed by the public.

We are beginning to see some of the tax costs of the Harris reforms. New taxes in the electrical utility sector complement property tax increases connected with provincial government downloading. Durham has just increased property taxes by over 11%. The promise of no tax increases has become a shell game.

1720

It's amusing to contrast the super-fantastic praise of business-run utilities and implicit condemnation of publicly controlled utilities with the vague commitment that this reform will actually lead to reduced prices for residences and small businesses. Speaking before the legislation was tabled, Hydro chair and Mike Harris confidant, Bill Farlinger, said: "Nobody really knows what the price of power is going to be when competition comes in. History would tell us that the price goes down, but that's a leap of faith." Harris himself is more bullish. He has said he is "quite confident." When introducing the legislation, Jim Wilson ventured that the reforms raised the "possibility" of lower prices. Getting a guarantee is like trying to nail jelly to the wall.

When pressed, Hydro CEO Ron Osborne did claim that rates should be lower for both small and big users of electricity. He cited the recently deregulated telephone busi-

ness. Unfortunately, while long-distance rates may have gone down, the cost of local services and service calls has gone up dramatically. The result? Big business and other heavy users of long distance are saving considerable sums, but for the average working person it's a different story. Meanwhile, over 7,000 Bell workers in the Ontario telephone industry have lost their jobs and others have been forced to take pay cuts. There has also been increasing pressure to close down small-town offices and centralize services in big cities.

While the public sector has played the dominant role in the Canadian electrical utility system, business plays a much more important role in the American system. So it is noteworthy that electrical power is significantly cheaper in Canada than in the United States.

I've got a document here which comes from the Ontario Hydro board of directors. It's talking about rates and the comparison of rates in Ontario vis-à-vis the United States. There are some charts here that talk about the cost of electricity to large industrial users, those that would be using at least 10,000 kilowatt hours of demand and approximately six million kilowatt hours of consumption. When you compare those to Ontario, our rate for 10,000 kilowatts comes out to be about \$383, but if you look at our nearest competition in the United States, which would be Detroit, their cost is \$444 for the same amount of electricity. When you compare the cost to the average consumer in Ontario, if you happen to be Toronto Hydro, you can do it at 92 cents per 1,000 kilowatt hours. If you're Ontario Hydro Retail, you can sell it for 95 cents per 1,000 kilowatt hours. The closest we can get in the United States, again Detroit, is at \$1.38, or in Chicago at \$1.55. I guess it begs the question, if we can produce electricity here more cheaply and sell it more cheaply under the existing system, why are we breaking up Ontario Hydro?

In terms of rate increases, we know that when you privatized Bell Canada and moved to deregulation, we have seen a 27% increase in consumer rates for telephone costs in the last two or three years. Ontario Hydro, on the other hand — again, this is according to the Ontario Hydro board of directors — had a zero per cent increase in 1994; in 1995 it actually dropped by 0.1%; in 1996 it dropped by 0.1%; in 1997 it was zero; in 1998 it was zero. When you factor in inflation, there has been an overall decrease in electricity costs in this province over the last five years. That begs the question, why are we going to privatize? Why are we moving to deregulation? For what? Do you think one single corporation in the private sector is going to turn around and offer these kinds of rate decreases and zero rate increases to the average consumer? Like hell they are.

Price and reliability are probably the two issues closest to the public's heart. So the lack of guarantees on prices for residential users and small businesses should be a major concern, especially given the radical nature of the proposed reform.

According to media reports, Hydro CEO Ron Osborne told this committee that in competitive businesses "you

either eat somebody else's lunch or you are somebody else's lunch." These may be words to live by for your average corporate tycoon, but we find them to be unsettling, especially when made in regard to a vital public service like electrical power. Will businessmen ensure that the lights stay on while they try to steal each others' lunches and put each other out of business?

Even now, years before the potential introduction of competition in the retail business, there are signs of business shenanigans. There have already been customer complaints about door-to-door salespeople asking to see personal electricity bills. A lot of customers thought they were dealing with utility personnel and some were quite concerned when they found out they had signed a contract with a company they don't know anything about and that can't even deliver on its contract until the year 2000. If the reforms proceed, more funny business may arise.

In New Zealand there were, until recently, almost 50 local power utilities, organizations akin to Ontario municipal electrical utilities. These publicly controlled bodies bought electricity from the Electricity Corp of New Zealand and sold it through their own networks to customers in their areas. Some were controlled by directly elected boards, others were accountable to city councils.

In 1990, the national government sacked the power boards and appointed a smaller number of directors chosen for their business backgrounds. It had been decided to put the boards on a more commercial footing. Then in 1992, the government passed the Energy Companies Act that corporatized the power boards, making them competing companies with a prime objective of making money. The franchise areas were done away with.

Tremendous struggles developed in the local areas over the outright privatization of the power boards. Against the wishes of local communities, eight power utilities were privatized. More became privatized when councils could not resist the temptation to sell them off to forestall unpopular hikes in property taxes.

In Auckland, there was fierce community resistance to the privatization of the old Auckland Electric Power Board, so its directors developed a plan that would keep control away from the real owners, the public, and eventually turn it over to the private sector. They sold 25% of the shares, the rest would be held by a consumer trust, but the trick was that the private shareholders, who owned only 25% of the business, would appoint a majority of the directors who ran the company.

Mercury Energy then set about making itself the dominant force in the New Zealand electricity industry. The company set about reducing staff with a vengeance, cutting costs by cutting corners. The result of this reform? On February 9, Mercury said one of its main cables supplying central Auckland had developed a fault. It was the second big cable to fail. The other had gone down January 20, causing a 20-minute blackout to about 8,000 central city businesses and apartments. Mercury said it was working on both cables but locating and fixing the fault could take two or three weeks. In the meantime, inner-city power users were told to reduce consumption or

face blackouts. Despite sweltering temperatures, the public came through and reduced peak loads by 10%.

But a third cable failed on February 19. People were trapped in elevators, shops were plunged into darkness, hospitals had to cancel all but emergency surgery. The next day a fourth cable failed and that was it. People were reduced to candles and portable generators. The big bosses packed up and left the city. It was 66 days before service was restored.

Dabbling with Ontario's electrical utility industry can come with an expensive cost. The electrical power industry is different from many other industries. Its reliability is crucial for every other sector of society, and it is certainly more important than opening up new areas for corporations to make a profit.

I want to talk briefly about schedule C of the bill, which amends the Ontario Municipal Employees Retirement System Act. These amendments create a new category of employer eligible to participate in the OMERS pension plan: associated employers. This category would include the successor corporations to municipal electrical utilities proposed in this bill. Associated employers would also include organizations or businesses that provide a service for a municipality or a local board. So in effect these changes affect all municipal, school board and other local employees, not just those working in the electrical utility industry.

Positively, the amendments allow workers providing municipal or local board services to participate in the OMERS plan whether or not their employer is a local government, a not-for-profit organization or a private contractor. Employees working for a private contractor or not-for-profit organization could possibly begin to participate in OMERS, providing important security for those workers.

However, associated employers would not be required to use the OMERS plan. Under the current legislation, employers in the OMERS sector must use the OMERS plan if they provide a pension plan. In effect, employees with local utilities will no longer be guaranteed that their employers will use the OMERS plan when providing a pension plan.

In the very short run, employers will likely wish to remain in OMERS, as they are currently enjoying a one-year contribution holiday. In the long run, the story may be different. Employers may try to substitute an inferior pension plan. This legislation should not open the door to the breakup of a very successful pension plan.

If restructuring in the public sector does have a benefit, it should be to ensure the use of the most effective and efficient form of delivery, not to undermine the pension benefits of workers. Guaranteeing pension benefits will also ease legitimate concerns of workers concerning restructuring.

In conclusion, few systems have had a more lasting or pervasive influence on the lives of Ontarians than our system of public power. The system of public power has played an important role in Ontario's prosperity. Fundamental changes to the system of public power should not

be passed lightly. One-sided, business-oriented reforms open a can of worms: broad-based privatization, problems of reliability, massive profit windfalls for a tiny section of society, rate uncertainty, tax increases, job loss. We hope this committee shares our concerns.

Thank you for taking the time to listen.

1730

The Chair: Thank you very much. There are four minutes for questions per caucus, beginning with the government caucus.

Mr Gilchrist: Thank you, Mr Ryan. Good to see you again. As usual, a brief that gives us lots to talk about. Time and time again, there is a consistent theme. I really have to suggest to you that you've bought a defective crystal ball and you really should get a refund on it. Implicit in all of your comments is such a degree of pessimism and despair that just is not borne out not only by most, if not all, of the other groups that have appeared before us, but John Murphy of the Power Workers' Union.

They are, I'm sure, quotes known to you, but John Murphy, speaking two months ago said: "There is no reason we shouldn't see the benefits of a competitive environment as a result of this bill." In your last comment you talked about pensions. "They," speaking about his employees, "are not going to worry about losing their jobs or their successor rights or their pension plans."

The president of the Power Workers', by the way, has more members workers in the electrical industry than CUPE. He has 15 of the MEUs plus, obviously, all the Hydro employees, so he's someone who has an even larger stake in this. I would be remiss in not commenting that perhaps the distinction is that that was a union leader who decided to work in the process, instead of standing on the sidelines and crying the blues.

Let me deal with a couple of your specifics because I've got to get —

Mr Ryan: Is that a question?

Mr Gilchrist: — my question in. That's exactly what I just said.

I must challenge, and I would like you to tell us where you derived your suggestion on page 4, that somehow, as a result of coming up with a more transparent system, something where the taxpayers would see boldly presented for them and where the MEUs and anyone getting into this business would be confronted with the fact that 40% of the hydro bill that your members and I and everyone else in Ontario pays is already going to pay the stranded debt — I would genuinely appreciate how you see taking that, dollar for dollar, and moving it into another category, whether you want to call it a tax, a competition transition charge or anything else. The fact of the matter is that this bill makes it very clear: Every penny of that will, for the first time ever, go into a dedicated bank account, guaranteeing to get that monkey off the backs of the taxpayers once and for all. How can you even suggest that to have changed that system will somehow increase prices?

Mr Ryan: Let me deal in facts, because you rarely deal in the facts. First off, you don't know this, obviously, so I'm going to educate you a little bit: the Power

Workers' Union is a local of CUPE, so the 15,000 members who belong to the Power Workers' belong to the Canadian Union of Public Employees. The 15 municipal utilities that they represent are members of CUPE. So to make a statement that they've got more interest and more stake in this is absolutely pure nonsense.

Mr Gilchrist: Reporting through John Murphy, so why would their spokesman have such a different view?

Mr Ryan: We'll talk about that in a second. John, I'm sure, will come before this committee and make his views known.

Mr Gilchrist: Right, tomorrow.

Mr Ryan: I spoke to him today, as a matter of fact, and he's happy and pleased with this report. You can get into that yourself, about why he feels there are some components of this that he can support.

Crystal ball gazing — I try to deal in facts. The Ontario Hydro board of directors have clearly come up and said that our rates, in comparison to rates around the world — I could go through the world rates here, but I'm more interested in the market we'll be directly selling to, which is in the United States. We're more than competitive with our nearest competitor, which is New York state.

Mr Gilchrist: You're on a bit of a tangent. I talked about the taxes.

Mr Ryan: Hang on a second. I'm coming back to your taxes, because it's all part of it, sir. Again, that's the problem with you. You don't fully understand —

Mr Gilchrist: If you want to get onto that issue, having damned businesses as being the beneficiaries, you now want to quote the large industrial user rates, when you know full well that in the blended rates, Ontario has the third-highest hydro rates in all of Canada, so let's not be disingenuous and use one argument to fight another.

Mr Ryan: Chair, I'd like to talk to you a second. Am I going to get badgered here by the Tories or am I going to be allowed —

Mr Gilchrist: Feel free to continue your diatribe.

Mr Ryan: If you'd just listen for a few moments, you might learn something. We have, both from an industrial —

Mr Gilchrist: It would be a first from you.

The Chair: Finish your response.

Mr Ryan: Can I?

The Chair: Finish.

Mr Ryan: From an industrial perspective, we are more than competitive with over half the jurisdictions in the rest of Canada. If you did your homework and took a look at where they produce their electricity and how they produce it, Quebec, one of the ones that are cheaper than us, has an abundance of hydro power. If you took a look at the comparison between hydroelectricity and nuclear electricity and fossil fuels, you'll find that hydroelectricity is far cheaper to generate, one of the factors in why places like Newfoundland and Quebec are cheaper than us. That's something beyond their control.

In comparison to the industrial generators in the United States, which we're trying to emulate here, clearly they

cannot produce electricity cheaper than we can here in Ontario. If they could, they would be doing it. Some \$155 per 1,000 kilowatt hours on the residential side versus \$93 for Ontario speaks for itself, sir. What you're saying is, let's emulate the system in the United States because somehow it's going to give us cheaper rates. The facts, sir — not crystal ball gazing — the facts don't support your argument.

Mr Gilchrist: You haven't even come close to answering my question, the taxes about replacing stranded debt, but I'm hardly surprised.

The Chair: We're going to move on to Mr Conway.

Mr Conway: Thank you very much, Madam Chair. Might I say that some exchanges, if they could be harnessed, would increase the electrical output and probably drop rates in the province.

Mr Ryan, you make a number of points, but let me just say a couple of things in response. First of all, I was struck by a comment you made on page 5: "There is no commitment to cut the new taxes once the debt is paid off. The new taxes could go on and on." There has been some discussion, and I just want to reinforce the point, that the bill this committee has before it, in section 86, is very clear what happens to a number of the new charges that will be imposed, understandably, to eliminate the stranded debt. As subsection 86(4) says, once the Minister of Finance determines that the stranded debt is finished, kaput, for example, "all payments that a municipal electricity utility is required to make under this section" go to the Ministry of Finance. The people from Mississauga Hydro were here earlier today and suggested, as others have, that that provision be sunsetted.

But the act we have is very clear. There are new charges. Yes, to be fair, a number of these new charges, these new taxes, are initially intended to write down the stranded debt, quite understandably, but some of the new charges do not terminate with the elimination of the stranded debt. They go on, under the terms of this act as currently written, to the credit of the Ontario government. I just wanted to make that point since you've raised it on page 5 of your brief. That's an area where I would agree with you. There are a number of other areas where I think your concerns are quite legitimate; I'm not going to have time to detail those.

But there is the other side of the equation, and you have to know this, that we are at this point today not just because there are new technologies and new opportunities — that is part of the equation — but some of us have been around a while and some of us last year sat on the select committee looking at Ontario Hydro's nuclear affairs. Ontario Hydro, the big public utility that has provided a lot of benefit to Ontario, to be sure, over a 95-year history, is a deeply troubled public enterprise these days, in large measure because the nuclear power division did not perform as advertised. I'm wondering if you have specific suggestions to me and my colleagues on the committee about how the trustees of the Ontario public interest could reasonably deal with what are, by any

objective standard, serious and systemic problems in the provincial utility, particularly at Ontario Hydro Nuclear.

1740

Mr Ryan: I think there are two answers to that. I used to work for Ontario Hydro. I worked for Hydro for 17 years, so I'm very familiar with the corporate structure and I'm familiar with the style of management of Ontario Hydro. I think it's been borne out very recently where employees were surveyed, and the sense that they're getting is that the senior managers are not listening to the employees in the corporation. It holds true, I think, for every sector of society, particularly in the public sector.

We are very familiar with how to deliver a good product at cost. We're very familiar with how to deliver and cut fat out of a system, whether it be those workers who are picking up garbage off the streets, whether it be people who are working in our hospitals or whether it be people who are working in nuclear power plants. I think there's a culture in Ontario Hydro that refuses to acknowledge that the workers on the front lines have a lot of the answers.

Indeed now, as I talk to some senior managers in Ontario Hydro, they're telling us they're going back to a lot of the programs, and are being encouraged to do so by the American gurus who came in just a while ago to help fix up the nuclear industry — they're going back to some of the programs they had put in place, in co-operation with the union, in the late 1980s and the beginning of the 1990s. I think listening to the employees on the front lines, who work in those facilities, would go a long way towards trying to change some of the culture in Ontario Hydro.

You talked about a company that's in serious trouble. Just reading the financial section of the papers just a few days ago, they made \$513 million, which is a 53% increase, in the last six months alone over what they were expecting to make. For a corporation that's in serious trouble, that's not —

Mr Conway: But Sid, let me say it, because I've said it to others —

The Chair: Could you wrap up.

Mr Conway: Yes. The difficulty I have is with the numbers. I don't want the public enterprise to do poorly, but those Hydro numbers, as I said perhaps a bit offensively earlier this afternoon to another witness, and I'm sorry for that, are bogus, if for no other reason that in the last year or 18 months the Hydro board, using apparently its rate-setting authority, just set aside and wrote down \$8-billion-plus worth of unrecoverable cost.

Mr Ryan: I can agree that this —

The Chair: I'm sorry to interrupt. You can integrate that answer into Mr Lessard's question, but we're going to move to Mr Lessard.

Mr Lessard: Thank you very much. One of the things I'd like to be able to put in this bill is to tell Ontario Hydro to listen more closely to their employees, but that's not something we will put in the bill, or if we do it may not change how they operate their business.

Time and again with other presenters, I've heard from the government their predictions that Bill 35 is going to

create jobs and is also going to lead to lower prices for electricity. Even though we have that commitment to lower prices from the minister, he isn't prepared to put that commitment in the bill. How is it that there's such a difference of opinion? You've mentioned some specific examples in other places where they've gone through some of these. Why is there such a divergence of opinions? You talk about job losses and price increases in your brief.

Mr Ryan: It's simple, to be honest. From a CUPE Ontario perspective, we're looking at this in a more global vision. We're looking at consumers, at costs, at rate increases and at what has happened in other sectors when they become privatized. This here is halfway to privatization. We're looking down the road a little bit, using that crystal ball that Mr Gilchrist was talking about, looking at what happens to the industry when it gets privatized. There we see a potential for job loss.

From the Power Workers' perspective, they're looking at this as a local union who've already lost thousands of jobs in the sector, who have seven nuclear power plants out of commission right now and are looking for somebody to come in and put investment dollars into refurbishing those. The Tories are refusing to refurbish the nuclear power plants so what they're saying is, "We need some extra dollars." When you look at these rates of \$95 for 1,000 kilowatt hours, that is more than competitive with the jurisdictions in the United States. They believe that by competing with Detroit hydro and New York hydro and so on — that if there are investments by private corporations into refurbishing nuclear power plants, they could avail themselves of the ability of Ontario Hydro to generate electricity at a cheaper cost and sell it back into the United States, where it would be very competitive. That investment back into Ontario Hydro, into those nuclear power plants, would rebuild and refurbish seven nuclear power plants. Kincardine, being a town where I used to live, would not be a community devastated by the loss of several thousand jobs.

That's where the Power Workers are coming from. They're looking at it more from an immediate response to a terrible problem, which is the layoff of thousands of workers, because the Tories are refusing to invest money in the nuclear power plants.

The Chair: On that note, we thank you for coming before the committee with your advice.

Mrs Johns: On a point of clarification, Madam Chair: I wanted to add — I'm sure that the member knows this and just didn't have enough time to go into it — that of course payments in lieu that are taken from the municipal electric utilities return to the municipality, not the province, as in subsection 86(4).

Mr Conway: That is true. I may have cited the wrong section, but my point is that there are other payments that do not, particularly the adjusted gross revenue payment. That continues, after the stranded debt, to the treasury. That's the point.

Mrs Johns: Our answer to that would be, not necessarily. That's at the discretion —

Mr Conway: But the point I want to make there, and I will debate this in clause-by-clause, is that the bill as written, which is what we're here to talk about, is very clear. The bill as written says once the minister decides the stranded debt is paid down, those MEU charges on adjusted gross revenue go to the provincial treasury. If that's not the intention, then I will be very happy, as will Hydro Mississauga and a number of others, to have an amendment to make it clear that there's some other policy. But the bill as written is very clear as to what the intent is.

The Chair: And I'm very confident that we'll go into that in detail as we go to clause-by-clause.

ONTARIO MEDICAL ASSOCIATION

The Chair: We go to representatives from the Ontario Medical Association. Welcome. You are our last presenters of the afternoon, but in the electricity hearings we are energized by those who come before us, so we are very eager to hear what you have to say to us.

Dr John Gray: Good afternoon. It's almost good evening. My name is Dr John Gray. I'm the immediate past president of the Ontario Medical Association. Our association, as you know, represents the 23,000 physicians working in Ontario. With me are the association's executive director of health policy, Dr Ted Boadway; and Patricia North, a lawyer who works in our health policy department. We thank you for the opportunity to testify this afternoon regarding the Energy Competition Act. I appreciate your comments about being energized. I hope we will help with that energization process.

On May 12, the OMA released a major position statement on the health effects of ground-level ozone, acid aerosols and fine particles. The paper, I believe, has just been distributed to members of the committee. Our research for this statement led us to conclude that air pollution of this type is a public health crisis in Ontario and some other parts of eastern Canada. Air pollution is a public health crisis in Ontario all year round.

In the summer, air masses stagnate and smog blankets Ontario, cities and countryside alike, for several days at a time. There's a kind of crescendo of concentration and of volume in the late afternoon and early evening.

Certain populations are more vulnerable to the effects of pollution, such as children, asthmatics, the elderly and individuals with heart disease or chronic lung conditions. But it's not just these populations who are affected by air pollution. We all are. No amount of air pollution is good or you.

Air pollution appears to aggravate lung infections and may also inhibit the body's ability to fight infection. Even for healthy people, long-term exposure is associated with decreased lung function and increased mortality.

Research commissioned by the Ontario government shows that approximately 1,800 premature deaths across Ontario are due to the effects of air pollution each year.

In addition, air pollution is stealing millions of dollars from the province's health care system annually. A study commissioned for the province forecasts the cost to the

province, if air pollution remains at current levels, suggesting that the total cost to the Ontario economy by the year 2015 will range from \$398 million to as much as \$1.2 billion.

If nothing is done about this crisis, people will continue to die and millions of health care dollars will be needlessly spent. This is a preventable tragedy. Air pollution must be reduced.

In the past, Ontario's doctors have taken a cautious and considered approach to the interrelationship between air pollution and health. For some time the medical community in Ontario found that the existing research was inconclusive. Ontario doctors now have definitive and empirical evidence about the breadth of the public health crisis caused by air pollution. Studies published in the past couple of years have convincingly established the facts, and startlingly enough, the research has been done on us, the people of Ontario. The largest concentrations of air pollution are in the industrial heartland of Canada, the Windsor-Quebec City corridor, where the majority of people live, work and play.

Although a good deal of the pollution is from Canadian sources, at least half of it comes from the United States. People downwind from us of course suffer from the pollutants generated here. So our health problems are not only matters of domestic concern but have international implications as well. Some of our recommendations address this particular situation.

1750

The pollutants come from coal when it's burned to generate electricity. The sulphur and nitrogen oxides which coal-burning plants generate are emitted from smokestacks and travel long distances with prevailing winds. At the same time, they undergo chemical changes to form ozone and acid particulates. Both are directly toxic to people. This contributes to air no one would choose to breathe and the results are hazardous for some of the people who are exposed to such air pollution.

Dr Boadway will give you a brief slide projection and explanation of how the effects from coal-burning pollution injure people.

Dr Ted Boadway: Ladies and gentlemen, if I could draw your attention to the slides, I think the most important pollution event occurred in December 1952 in London, England. In that particular year an air pollution event occurred. This was just at the time when we could begin to measure particulates. Ordinarily, particulate levels would be down here on an average day. But a temperature inversion occurred in England which caused particulate matter to soar in just a matter of a day or two, as you can see. On an ordinary day in the city of London, the burden of death would be about 130 to 140 deaths per day. But within a one-day lag period, the number of deaths skyrocketed exactly parallel to the pollution level and remained at that level for the length of the pollution disaster. As you can see here, the excess number of deaths represented by this pollution disaster were about 3,500 extra deaths in this community.

That established that pollution can kill. It is only with scientific hindsight that we know that the actual killing episode here was caused by the sulphur in the coal burned in space heating used in homes at that time. At that time they couldn't sort it out, but with hindsight and subsequent research we now actually know the mechanism of death.

I will elucidate that with you. How does that affect people? That was a particulate episode. Ozone is also produced by the nitrogen which comes out of smokestacks; sulphur is produced. They both do the same thing. A burn is a burn as far as the lung is concerned. It causes swelling and inflammation, just like a burn on the back of your hand from hot water or chemicals or sunburns: swelling, inflammation and redness. A burn is a burn.

This is a bronchial passage, the smallest airway just before you get to the alveoli. This is not a bad diagrammatic representation. With ozone or with particulate acidification you can demonstrate, both in the laboratory and exactly the same in the person on the street, that you get a tightening of the muscle, which decreases the overall diameter and therefore this critical air passage part, and it increases swelling in the mucus membrane and increases fluid production, all of which have an effect on decreasing air-carrying capacity. In those of us who are most sensitive to it, such as those who are asthmatic or with chronic bronchitis, it becomes an even worse condition and the airways actually can become closed off.

What that does to you and me is this. This is actually my lung function study. It's a very simple test. This line here represents what happens when I go — huh — blow out one hard breath, top to bottom. In the first second, I actually blow out four litres of my total five-litre capacity. In the next two seconds I only blow out one litre, even though I make a lot of noise and make a lot of muscular effort. That amount that comes out in the first second is called the forced expiratory volume in one second, FEV₁. It's turned out that the longer we live with it, the more we know about it to be an incredibly effective predictor of survival. I have a good survival. This is what you require as you sit, blink and breath and do nothing more to survive, an FEV of one. If you do anything more, you require more than that. I'm using about this much now because I'm talking and I'm a little nervous, but this represents my reserve capacity. I have to damned near run myself to death before I can use all that. Few of us do that in a day, but that's the reserve we have.

When we have an ozone effect, this is the realistic effect that you and I have had this summer with the ozone concentrations we have had in this city. It's called a subclinical effect because our FEV₁s fell — and you can measure this — by this amount. It's called subclinical because you were unaware of it — none of us knew we had it — but you can test it and find it easily, so we call it subclinical. That is a real effect, the realistic effect each of us experiences with ozone. This is particularly worked out for ozone; you can do the same thing for particulates.

This line here represents your neighbour and mine who has emphysema, chronic bronchitis, the asthmatic kid who comes to your cottage. That's what their line looks like.

They have limited capacities. They live very well as long as they live within their capacities. They're doing fine for normal life, until they have the same ozone effect that you and I have. I'm calling it a subclinical effect to show it's the same effect, but in fact when we drop their curve below this line, they die.

That is what these doctors see. When they look at the patient, they do not see an ozone admission. They don't see an air pollution admission. What they see is an asthmatic case gone haywire, the chronic emphysema case with an exacerbation, the congestive heart failure who has tipped over the edge. That's what all those doctors saw in London with the 3,500 people who died in those days. They didn't make a diagnosis of air pollution, but that's what was killing them. It comes through the door as something you recognize as a condition by another name.

The same humps occur in Ontario, more difficult to find. We now understand what they were. I just turn you to the research in Ontario. First of all, I'd like you to look at the dates at the bottom here. The world's researchers have beat a path to the door of Ontario, because we are unique. You have to have a polluted environment to be test guinea pigs; we've got that. You have to have good medical records, and as much as we decry the state of our medical records in Ontario, they happen to be the best on the continent; when you've got it good, you complain anyway. So they can study us, and when they study us this is what they find.

When Burnett studied us, he found that if virtually all the Ontario hospitals, all the biggest ones, related ozone and sulphur admissions to hospital admissions, over five years, if you look at all the admissions, they were responsible for 6% of respiratory illnesses, 15% of the admissions for children and 4% of the admissions for the elderly, huge numbers.

If you look at ozone and hospital admissions in 16 Canadian cities, of which five were in Ontario, they were able to calculate that if ozone concentrations go up by 30 parts per billion, you will have an increase of 4% in admissions for respiratory illness. Remember, we call it a bad pollution day when we have 80 parts per billion, so it's almost three times that, and we in fact will reach rates of 120. That is in keeping with what other researchers have discovered, that in all Toronto hospital admissions, studied over a three-year period, these were responsible for 24% of summertime respiratory admissions in this city.

You send your kids to camp because they're going to get into the pure air and the clean air. Well, you know about drift of air mass by now and how, unfortunately, it blankets the province. Studies reported in 1996 — we couldn't have made this presentation five years ago because the data weren't there; if I had more time I'd give you the detailed data — studies on kids in Ontario camps showed that as the ozone went up, the kids FEV₁ curves went down, and these were healthy kids at normal camps. These were not asthmatic kids. This was in Ontario camps.

A further study was done by Dockery — these are all international researchers — on 13,000 rural children. Four

of those rural communities were in Ontario, 2,000 kids, which means that virtually all the kids in those towns were involved, almost none were missed. Studying the admissions showed, once again, a striking correlation between hospital admissions in respiratory diseases and visits to emergency departments in those children with air pollution episodes, and these are rural communities.

1800

What we see is a situation where air pollution affects everyone, whether it's subclinical or clinical. None of us escapes. Most of us live in a fool's paradise of believing it doesn't affect us and don't know it does when it does, because we don't subject ourselves to the type of maximum exercise that would show it up. Anyone of any age who is particularly affected with cardiac conditions, heart failure or atherosclerotic heart disease, pulmonary conditions, bronchitis, asthma, emphysema and other chronic destructive pulmonary diseases, these are the people who are killed during these episodes.

We are demonstrating that people die in Ontario, that the costs to the system are huge, and of course this is the source. When you see this great big pile of coal, when you see a mountain of coal, even 3%, 4%, 5% or 6% of that represents a huge amount of sulphur, and when it's burned, that generator, which we need so desperately in this province, nevertheless produces a huge amount of nitrogen oxides also, which form part of our load pollution.

Dr Gray: I'd ask you to consider, then, that air pollution, which is a preventable antagonist, is also exacerbating the stress on our health care system, and left to flourish, it will increase its pressure in years to come. So what do we want to see done? While various government regulations have sought to reduce air pollution, Ontario still has a long way to go to catch up to more proactive jurisdictions elsewhere.

Ontario's doctors are concerned that the restructuring of Ontario's electricity market and the expansion in the use of coal to generate inexpensive power will increase, not decrease, the amount of toxins in the air.

In relation to the restructuring of the electricity market, Ontario's doctors recommend four things: (1) regular public disclosure of emission data; (2) Ontario should replace Ontario Hydro's voluntary nitrogen oxide reduction commitments with a mandatory cleanup; (3) restructuring of the electricity market must include more stringent controls on sulphur dioxide and nitrogen oxide emission limits; and (4) there should be a mechanism, such as system benefits charge, to create a fund dedicated to investment in cost-effective energy and energy conservation projects.

In our report, on pages 25 through 28, we make specific recommendations on how this legislation could address these health issues constructively.

Ontario's doctors support a tightening of ambient air quality standards on both sides of the Canada-US border to address some of these health effects. The OMA believes that opening the electricity sector in Ontario to competition provides the government with a unique opportunity to have a positive and beneficial impact on the environ-

ment and on the health of Ontario's citizens. This opportunity must not be missed. We all know we need electricity, but we also need to protect health. When faced with two competing needs, the task of the political system is to find, as Mr Conway says, the optimal balance between these needs which results in the least injury. The Energy Competition Act fails to achieve this optimal balance because it fails to use this opportunity to protect the health of our patients by improving current emissions standards.

The Ontario government has known for some months of the damaging health effects which will result from opening the electricity market to competition without proper environmental protections in place. Despite this knowledge, no attempt has been made to guarantee the protection of the health of the people of Ontario.

Among the many recommendations contained in our document, which has been available since May, the only one recognized in this legislation is requiring the public disclosure of pollution emissions. It appears that the government intends to let the market decide whether clean electricity will be produced or not. In our opinion, the market is a particularly poor place to attempt to make this balance because the market doesn't care about health.

The dirtiest sources of electricity are usually the cheapest sources. However, this fails to take into account their hidden expense. At first blush, electrical energy purchased from a dirty polluting source may appear cheaper. However, we now know that this will result in a significant number of deaths and a decrease in the quality of life for the people of Ontario. The cost to our health care system will increase tremendously, an increase which will likely be significantly more than is saved by purchasing cheap electricity. The result of this market transition is a situation in which the cost to the people of Ontario is not decreased overall, since we pay for both sides of this economic equation. Our patients, the people of Ontario, are the casualties of this economic transaction.

Dirty electricity is cheaper to the consumer, but the expense is displaced to the health care system and people suffer needlessly as a result. Increased expense to our already overburdened health care system and poor health for Ontario citizens will be the result of letting the market decide whether to purchase electricity from clean or dirty producers.

It's not too late to use this opportunity to balance the need for electricity with the health and environmental concerns of the people of Ontario. In our paper we offer realistic recommendations on how this can be done. We hope you will seriously consider amending this legislation to achieve a result from which everyone will benefit.

Thank you for your attention.

The Chair: Thank you. We have 10 minutes per caucus for questioning. We begin with the Liberal caucus.

Mr Conway: Thank you very much, Dr Gray and colleagues. It was a very powerful presentation and some very specific advice. As you prepared the paper and undoubtedly looked at the North American environment, are there examples in the United States that you would

point to, where the specific proposals, the four points you offer at the bottom of page 3 and the top of page 4 — could the committee confidently look to state X or state Y as an example of where other jurisdictions in Canada or the United States have done the sorts of things that you recommend we should do here to improve this bill?

Dr Gray: Yes, actually you could look to the state of Ontario. What you would find if you look at the generating sources in Ontario is that we already have generating sources that conform to our recommendations. We didn't wish to be extreme or to go overboard in trying to find something that didn't exist, so we looked to already existing technologies. There is a huge variety of generators in Ontario, some of which already meet what we have suggested here. On the other hand, there are some very dirty generators in Ontario.

If you go to the United States you will find the same thing, especially in the Ohio Valley, a tremendous mix of generators. Of course, in the Ohio Valley they're trying to open some of the oldest and dirtiest ones. We're afraid the same thing might happen here.

Mr Conway: On a follow-up and just a final point, it's no secret that we're facing some very difficult choices in the very short term as we struggle with the nuclear asset optimization plan. It's pretty clear from what you've presented that domestic coal-fired generation is not something we should be looking at without some significant change. Have you any specific advice for the next two or three years, particularly thinking about NAOP, the nuclear asset optimization plan?

Dr Gray: Yes. If you look at the recommendations we've made, we know you can't get there in a year or two. It's unrealistic. But we do believe that if you looked at where you wanted to go in tonnage of emissions and looked at each source of it and then decided what you had to do — for example, if you took some of your dirtiest ones, like Lakeview, and said, "That's the first on the hit list because that's the one we need to get rid of first" — you would then be into a replacement scheme over a few years. In the very short term, within a year or two, it may not be doable, but you can set up the scheme that will get you there.

Mr Lessard: I want to thank you for a very convincing presentation. You've demonstrated that air pollution isn't just an environmental concern but is a health concern as well. In fact, it's a health crisis, I would suggest. I'm concerned that by opening up the market to competition we're encouraging lower-priced dirty-coal plants in Ohio and even Michigan to start up plants to sell into the Ontario market. We saw a plant that hasn't been operating for 10 years, Conners Creek, that had planned to start up this summer, but thankfully the Environmental Protection Agency in Michigan wouldn't permit them to do that.

One of the statements you made is that the market doesn't care about health. I agree with that, because they're able to dump those costs onto the public. I don't want to see a change where the market becomes sible for health care, because that means the privatization of the system and I don't want to see that happen.

We've heard from others the suggestion for a systems benefit charge. I've asked other people, if there's not that requirement in the legislation do you think it's going to happen? I think I know your answer to that question. Other people have suggested the renewable energy portfolio standard as well. I want to know if you're familiar with that and whether that's something you think we should put in the legislation as well.

1810

Dr Gray: You've actually raised two points. Perhaps while Dr Boadway or Patricia might be thinking about the second one, I want to touch briefly on our concern, which I think everyone in this room shares and we certainly share, which is the transborder drift and the possibility of external sources of pollution exacerbating, at least not ameliorating, our current situation. We are well aware of that and we have made strong representations — Dr Boadway and I have testified before the United States EPA, which is contemplating rule-making to impose stricter standards on the Ohio Valley and other polluters. In addition, we have made representations to the federal Environment minister, hoping there will be some national standards, which I think all provinces could then accept as emission control targets, because currently it's all voluntary targets. We have made it clear in our paper that we believe voluntary targets just don't work.

I'll ask Ted to comment on the second one.

Dr Boadway: We think that if systems benefit charges aren't in the legislation, the chances of that happening are remote. Quite frankly, a systems benefit charge is a very large societal decision. It's the kind of thing that really only the political system can do, because it's the people through their political system saying, "We value this enough to mandate that this kind of thing occurs." I really don't even think it's reasonable to expect a private business to make that kind of decision, especially absent what another business might do. It's not fair to them. Unless we collectively say, "This is what we want to do," it won't happen, because it's not fair and they shouldn't be expected to pick it up themselves.

Mr Hastings: The fundamental question I would put to all of you folks is that you talk about balancing the optimal effect; you want to have the environment protected, you want to reduce air pollution. But in your recommendations I don't see anything that deals with your position on how you balance that optimal effect dealing with nuclear energy. Do we bring back and make a substantial investment in getting some of our nuclear systems back on stream to provide cleaner power?

Also, you don't link up strategically with other options in preserving the environment. I don't see anything in there dealing with other types of generation — biomass, wind or solar — in terms of balancing out where you want to have this society go in reducing air pollution and reducing health care costs. I see a silence on both those key vital policy areas.

Dr Gray: We clearly recognize the dilemma for the committee and for all sources of electrical generation. What we've tried to say is that investments made in some

of these other sources, which may on the surface appear more expensive, may pay dividends in savings to the health care system. Conversely, ignoring those other systems and allowing coal-fired generation, for example, to increase, particularly older plants that aren't subject to the current standards even, may in fact compound and increase the costs in the health care system.

It is a teeter-totter. If air pollution increases, the costs to the health care system will increase. While the costs to the electrical sector may go up by looking at alternative sources, the costs to the health care system may go down, or, conversely, it could be the other way. We don't have the right answer. We're just saying that all these factors must be considered, and it's not only costs, it's the quality of life that —

Mr Hastings: Does that include reviving our nuclear industry — because we're grappling with that whole policy issue — to reduce air pollution?

Dr Boadway: You are grappling with that and I do not envy your task, sir. You are right that we were silent on it, because we don't know what to say. We're ignorant on that and we can't give you wise advice on it. We're not engineers. What we tried to do in our recommendations was focus on the health issues. Our concern is that the health calculation wasn't part of the calculation. We think it should be. We defer to you on some of these larger policy questions not in our expertise. What we would like to do is help you bring the health part into the equation. We will contribute our expertise only where it's of value to you. If you ask me about nuclear generation you're going to get a lousy result, because I don't know the business. But we will help you with the whole equation, if we can do our part.

Mr Galt: Thank you for an excellent presentation that brought back some memories. My background is veterinary pathology. I thought you were putting the message across very well. I certainly have seen lesions like that with ammonia burns in livestock lungs.

I just want to bring two things to your attention. I know we're down on time. On page 4, near the bottom, the dirtiest sources of electricity are usually the cheapest

sources. No, fossil fuel plants are relatively expensive in the production of electricity. Certainly nuclear is cheaper, and once you get hydraulic plants set up. Where they do come in very well is for peak periods. Yes, there are an awful lot of dirty plants in Ohio. Presently, it's not set up that we can get the green power on to the grid, but they can buy dirty power out of the States. That's the kind of peak period power they would be buying.

The other comment — I wanted to relate to the four points you're raising, starting on page 3. The first three very definitely are planned and we want to develop regulations around those as best we can to reduce pollution, certainly not to have any of it increase, and enshrine it in the regulations rather than simply being voluntary. Point 4 is being considered.

Thank you very much, Madam Chair, for letting me get a comment in.

Mr Lessard: I thought you were going to ask about the 1,800 crosses on the lawn.

Mr Galt: The organization that put those there were out to raise money for the organization. They had little concern about the legislation.

The Chair: I don't think we'll go down that path at the end of a very productive day.

Thank you very much for coming before us. We appreciate the advice you've given us. It's been a very interesting presentation to end our day.

Mr Conway: Madam Chair, before we adjourn I want to correct the record and support a point that Ms Johns made earlier. She's absolutely right; I wasn't reading carefully from my copy of the bill. The point I was trying to make — and I was wrong to cite subsection 86(4). As she rightly pointed out, the sections I should have referred to were subsections 87(1) and 87(2) and, to a somewhat lesser extent but still on the same point, subsections 85(1) and 85(2) of the Electricity Act. Those were the sections I intended and I wrongly cited 86(4).

The Chair: Colleagues, we will adjourn. We reconvene tomorrow morning at 9 o'clock in the Amethyst Room at the Legislature.

The committee adjourned at 1819.

CONTENTS

Wednesday 19 August 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson /*

| | |
|--|-------|
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, projet de loi 35, <i>M. Wilson</i> | R-313 |
| City of Mississauga | R-313 |
| Mr Dave O'Brien | |
| Pelham Hydro-Electric Commission | R-318 |
| Mr Brian Walker | |
| Hydro Mississauga | R-323 |
| Mr Karl Wahl | |
| Ontario Hydro Central Market Operations | R-327 |
| Mr David Goulding | |
| Mr E.W. Browne | R-330 |
| New York Mercantile Exchange | R-334 |
| Ms Denicse Palmer-Huggins | |
| Energy Probe | R-339 |
| Mr Tom Adams | |
| Mr Mark Mattson | |
| Mr Norman Rubin | |
| Citizens for Renewable Energy | R-343 |
| Mr Siegfried Kleinau | |
| Canadian Union of Public Employees, Ontario Division | R-347 |
| Mr Sid Ryan | |
| Ontario Medical Association | R-353 |
| Dr John Gray | |
| Dr Ted Boadway | |

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)
Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)
Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)
Mr Doug Galt (Northumberland PC)
Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)
Mr Bart Maves (Niagara Falls PC)
Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)
Mr Steve Gilchrist (Scarborough East / -Est PC)
Mrs Helen Johns (Huron PC)
Mr Monte Kwinter (Wilson Heights L)
Mr Wayne Lessard (Windsor-Riverside ND)

Clerk pro tem / Greffier par intérim

Mr Tom Prins

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service



Legislative Assembly of Ontario

Second Interession, 36th Parliament

Assemblée législative de l'Ontario

Deuxième interession, 36^e législature

Official Report of Debates (Hansard)

Thursday 20 August 1998

Journal des débats (Hansard)

Jeudi 20 août 1998

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Energy Competition Act, 1998

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 20 August 1998

Jeudi 20 août 1998

The committee met at 0900 in room 151.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

CANADIAN ENERGY
EFFICIENCY ALLIANCE

The Chair (Mrs Brenda Elliott): Good morning, everyone. The standing committee on resources development is called to order. We are once again considering presentations on Bill 35.

We call now on our first presenters, representatives from the Canadian Energy Efficiency Alliance. Good morning. Welcome to the committee. Please make yourself comfortable. You have 30 minutes for presentation time. We hope you'll leave some time at the end of that for questions. Begin, please, by introducing yourself for the Hansard record.

Mr Bruce Lourie: Good morning and thank you for providing me with the opportunity to speak with the committee today. My name is Bruce Lourie. I am going to describe myself with a brief biography, but I'm speaking today as the executive director of the Canadian Energy Efficiency Alliance. I hope the committee will find my comments to be helpful as you consider how the important matters before you affect the life of Ontarians: the quality of our air and water and the competitiveness of our economy.

I wanted to provide a brief personal background so you can have a context for my remarks. I own and run a small consulting business in Ontario which specializes in energy and environmental issues. I have worked independently for nearly 10 years. I now, through that organization, run a number of different organizations and programs and

employ half a dozen staff. I think I therefore have some understanding of small business issues in Ontario.

I've been involved to a significant extent in the issues of environmental protection and energy efficiency in a competitive electricity market. I have organized and run workshops on this subject. I've consulted to government, utilities and non-government organizations. I am a member of the advisory board of the US Clean Air Task Force — I'm the only Canadian on that group — and I was very pleased to be appointed by the Honourable Jim Wilson to the Electricity Transition Committee and have been participating in all of those meetings. I am also a member of the federal Office of Energy Efficiency's national advisory council on energy efficiency, and I act as a director on the boards of several organizations in Canada and the US. But I am speaking today, officially, as the executive director of the Canadian Energy Efficiency Alliance.

The alliance is a three-year-old non-profit organization created to promote energy efficiency and ensure a competitive economy, and to protect the environment. We have a very active membership. It has grown from nine founding members to over 30 members that represent the full spectrum of energy stakeholders in the province. I know our membership has been well represented before the committee. Our membership includes Ontario Hydro, Union Gas, Consumers Gas, the Municipal Electric Association, the Independent Power Producers' Society of Ontario, the Canadian Association of Energy Service Companies, Pollution Probe, the Sierra Club, the Consumers' Association of Canada, Owens-Corning, Canada Trust, and many other companies and organizations in Ontario and in fact across the country. These organizations have come together with one common interest, and that is the pursuit of energy efficiency. Many, like Ontario Hydro, have been very supportive of our organization from the beginning.

I plan to keep my comments simple and hopefully to the point. In fact, I have only one recommendation I would like this committee to consider, and it's something that isn't considered in Bill 35. I'll mention it now and then explain it more fully through my comments. I thought as well that it's good to keep in mind that this recommendation was developed by the diverse membership of the Energy Efficiency Alliance and ratified at a board meeting of our alliance. It was also recommended by the Ontario Medical Association in their recent report, the Health Effects of Air Pollution in Ontario. It is supported by

environmental organizations throughout the province. It is included in the restructuring of virtually every other electricity market around the world, and it is included in Clinton's national electricity competition plan. Yet it has been rejected by Ontario's Market Design Committee, and I will tell you why in a moment.

The recommendation is this: that a fund be created to invest in cost-effective energy efficiency projects. It's really quite simple. The precise details on how this fund would be generated, how it would be managed and exactly what would be funded have not been discussed at great length, although I will be providing some ideas in a few moments. What we're really looking for is an indication of some support from the government that the idea is sound and supportable. It is clear to us that the idea is sound. The real question is whether the government will recognize that there are well-known barriers to cost-effective energy efficiency that will not be overcome, in fact will be exacerbated, by a competitive market and that relatively small investments up front can reap major benefits for Ontario businesses and Ontario residences.

I am talking about investments in what is called market transformation. Unlike demand-side management programs of the past, which offered subsidies for product purchases and generally left a bad taste in everyone's mouth, market transformation investments are made strategically and targeted to overcome known barriers to efficiency, allowing the marketplace to operate more effectively in achieving the desired gains in efficiency.

There are many examples of barriers to cost-effective efficiency, and I will provide one quick one now. It is called a split incentive. In a large commercial building development, the developer's goal is to build a building as inexpensively as possible, ie, to minimize the capital costs. This means that higher levels of insulation, more expensive energy-efficient windows and lighting and a more efficient heating-cooling and ventilation system will not likely be installed. All the operating and energy costs are passed on to the tenants. This includes more for electricity and more for gas. At the end of the day, the overall cost to society is much greater, even excluding the environmental costs; because the developer has no incentive to reduce his operating costs, they are all passed on.

Another complication in this example is that financial institutions frequently have no means for evaluating the advantages of a more efficient building in terms of leaseability, tenant comfort, tenant retention etc. All they see are upfront costs requiring short-term paybacks. A fund could provide the necessary capital or loan guarantees to support a more efficient building. This could operate as a revolving loan fund, with loans paid back with interest. That's just one example of the many kinds of barriers to cost-effective efficiency that exist in a marketplace.

I hope I leave this committee with a clear understanding that the goals of the Energy Efficiency Alliance and our recommendation are consistent with the direction the government is heading in and the primary purpose as stated in the title of Bill 35. We support electricity competition. We want to see lower energy bills in Ontario. We

want to see more investment in the Ontario economy. We want cleaner air and water. We want to see more jobs. We support investments in science and technology. These are precisely the reasons we think a fund to support energy efficiency is needed. I would like to touch briefly on a number of these goals.

First, it is interesting to note in section 1 of the bill under "purposes" that nowhere is lower-cost energy mentioned. The big assumption is that competition will result in lower prices. As I stated in my presentation before the select committee on nuclear energy, the average Ontarian would be happy to have lower energy bills, but most probably would not notice a fluctuation of 10% in either direction and likely not mind a small increase in rates if it meant protecting the environment and supporting domestic industries.

0910

Note that the concepts of lower energy bills and cheaper electricity are very different. You can improve efficiency and lower your bills without changing the electricity rate. It is likely easier and more cost-effective to lower energy bills by achieving higher levels of energy efficiency than by restructuring the industry, but I know that's obviously not the case. But we must keep in mind the primary and really sole driver behind electricity competition in Ontario, and that's large industry. When I hear the government saying that what customers in Ontario want is cheaper electricity, I can probably name the 40 customers the government is referring to; the other 11 million don't seem to really count.

The outcome of a successful competitive market in Ontario is to have greater investments in Ontario industry, leading to job creation. In the Ministry of Energy, Science and Technology 1998-99 business plan, the minister notes that two out of every three new jobs in Ontario were created in knowledge- and technology-based industries. One such industry where Ontarians have played an international leadership role is energy efficiency, particularly building efficiency. I think the point the minister was getting at in that comment is that it's small and medium-sized high-technology businesses where we're seeing growth in jobs and investment. I think that's an important consideration.

The business plan also recognizes the importance of energy efficiency and the linkage to economic development, increased jobs and investment. It also commits the ministry to invest in science and technology, leveraged by the private sector. This is precisely the model we are recommending for the energy efficiency fund. Better yet, there is an easy way to encourage private sector leveraged support, remove the need for government and provide a taxpayer-free mechanism for creating the fund. I will explain how it could work in one moment.

I want to refer to one other report, the Second Interim Report of the Market Design Committee, specifically section 5.3, where energy efficiency is discussed. As you know, the government created the Market Design Committee to provide advice on developing the market rules and governance structures for a competitive market in

Ontario. It is clear from the composition of the committee that their strengths and motivations are related to electricity supply and free market competition, not efficiency. It is even clearer reading the report, and having attended some of their subcommittee meetings, that energy efficiency was not an issue well considered by the committee. They recommend that the government continue to encourage energy efficiency through the distribution of information and to pursue energy efficiency programs using public monies.

It seems odd that a group charged with the job of creating the rules for a competitive market free from government interference would recommend that the government continue to manage and deliver programs using taxpayer dollars when a clear, well-established alternative exists, particularly when this alternative will provide greater benefits to the public and small business and appears to be more consistent with the business plan of the ministry.

Perhaps the Market Design Committee recommendation should have been simply to have the government identify an appropriate organization with sufficient expertise and industry representation to advise the government on the best approach for facilitating energy efficiency in a competitive market. I am certain the conclusion would have been very different.

Getting back to the recommendation that a fund be created to facilitate energy efficiency, the term often used for an energy efficiency fund is a "system benefits fund," and this is derived from the notion that there are benefits to an integrated electricity system that will be lost in a competitive market. Ontario appears to be heading on a course to be one of the only restructured electricity jurisdictions worldwide with no plan or funding mechanism in place to support energy efficiency in a competitive market.

A system benefits fund is typically created through a charge on electricity, typically 1% to 3% of the price. I know there is considerable sensitivity around the notion of another charge on electricity, given the anticipated debt charge. This does not seem to be a valid reason for not considering a positive charge — not to be confused with electrons — as long as it is applied fairly and takes into consideration principles around fuel neutrality. In fact, I am certain electricity consumers in Ontario — again the 11 million, not necessarily the 40 — would be much more willing to pay for energy efficiency to reduce their bills as opposed to paying old debts on malfunctioning nuclear power plants. In fact, you could probably create a single bundled energy charge and drop the much larger debt component when the debt is paid off but continue the energy efficiency charge. This would seem to me to be much more politically attractive. This is also a neat mechanism which eliminates the need for direct taxpayer monies.

A fund could also be created by the government out of general revenues. The advantage of any fund over the status quo is that the fund would operate either independently or at arm's length from the government. An independent fund could also be established as a founda-

tion, similar to the foundations being created by the Ministry of the Environment or the Ministry of Natural Resources, both of which I've been involved in to some extent. A foundation structure could then facilitate leveraged funding from the private sector, resulting in more effective, coordinated funding.

The recommendation of the Market Design Committee to have the government continue to manage programs directly is probably the last choice of the energy efficiency sector. There are few, if any, examples in Canada of successful energy efficiency funds run by governments at any level, although I would like to note that there are some successful programs.

The key to a successful approach for overcoming the barriers to energy efficiency is to have the energy efficiency sector stakeholders working together. The recommendation is therefore that the fund be managed by a non-profit multi-stakeholder agency, not government. The agency would be self-funded through the fund or services provided and report to the Ontario Energy Board periodically.

In terms of the fund amount, if, for example, we assumed that the fund were equal to 1% of Ontario Hydro's revenues — in the US there are examples where they're looking at 3% of utility revenues to create funds — the annual fund would be nearly \$85 million. This is a very modest amount compared to the billions of dollars in the nuclear recovery program, the billions of dollars Ontario Hydro planned to spend on demand-side management, or even the hundreds of millions of dollars the Ministry of Energy, Science and Technology plans to spend on R&D over the next few years. There seems to be no connection between the ministry's science and technology mandate targets and energy targets. Perhaps the ministry ought to make the linkage and dedicate the \$85 million out of the science and technology budget to a fund, if a system benefits charge is not implemented.

In terms of comparative government spending of tax dollars, it is difficult to avoid comment on the massive expenditures on nuclear plant recovery. We know that billions have been spent and billions more are planned, yet we are uncertain when the billions will stop flowing. Moreover, it amazes me that the very same companies and business associations who insisted that Ontario Hydro make huge, ill-advised investments in nuclear energy are now successfully lobbying the government to stick the taxpayers with this debt, while at the same time opposing negligible charges to improve efficiency and the environment for all Ontarians. Something seems to be wrong with this picture.

In terms of disbursement, funds would be invested in energy efficiency and conservation initiatives based on a set of criteria developed by an independent board overseeing the fund. The criteria would be reviewed by the Ontario Energy Board periodically and be consistent with the policies of the government. Funds could be disbursed to sectors according to contributions made by the sector through a charge, or other criteria if public monies are used.

Again, to conclude, the recommendation is that the government create a fund to facilitate overcoming the barriers to cost-effective energy efficiency and that this fund be managed by an independent multi-stakeholder organization.

I would be happy to take questions. Thank you.

The Chair: Thank you very much. We have three minutes, probably time for one question and answer from each caucus. We'll begin with Ms Churley from the NDP caucus.

Ms Marilyn Churley (Riverdale): Thank you very much. In my view, I believe you gave one of the most important presentations to date, although I admit I haven't been to all the hearings, only those in Toronto. It is very important and, unfortunately, it hasn't been focused on enough. There has been some talk of renewable energy and some mention of energy efficiency. It's been a long-time interest of mine. When I was on city council, I started the first energy efficiency office, which, as you know, has now led to a major atmospheric fund and all kinds of activities. It's really incredible, with a small investment and real political dedication, how far that's come.

I'm wondering if you can tell me the difference between what that atmospheric fund is doing and what you're suggesting here, and other examples of where this is working. You mentioned that there are some. I believe we really need to push this concept. The more information we have and the more ideas of how to make it work would be helpful.

0920

Mr Lourie: I was actually one of the early board members of the Toronto atmospheric fund and I'm quite familiar with how it works. It would be similar in terms of the kinds of projects that would be funded. The one distinction I would make is that a fund, to be really successful, be more removed from government influence and that it be truly at arm's length to government and that it be the people in the industry making the decisions as opposed to, in the case of the atmospheric fund, where it's primarily the politicians who make the decisions. But it is a good example of a fund that has been set up to do these kinds of activities. The amount of money given out is quite modest. It's used largely, as you may know, to fund municipal projects like the city lighting project and those kinds of things, which are important. But it is a kind of model we could look at.

I didn't want to go into a lot of detail in my discussion of how it's being developed in other jurisdictions. In many cases, the restructuring is just in the process of unfolding around the world. I have provided, for example, to the Market Design Committee detailed information on these kinds of programs which do exist. They're structured somewhat differently. For example, in Norway and Sweden I believe the government has set up regional agencies that are essentially regional energy efficiency offices. In the United Kingdom a fund was set up based on a charge. In California they've created a fund I believe based on 3%, so it's collecting several hundred million dollars to fund both renewable energy development and

energy efficiency projects. So there are examples we can look at.

Ms Churley: Great. Thank you.

The Chair: From the government, Dr Galt.

Mr Doug Galt (Northumberland): The percentage you're referring to would be on the customer's bill? It would appear on the bill? It would be however it could be worked in.

Mr Lourie: That's correct, yes.

Mr Galt: You may have explained, but I seem to have missed it. You mentioned that the Market Design Committee did not support it and that you were going to explain that, and I never did pick up that explanation of why they're not in support of it. I just don't understand why they're not supporting it when you're so enthused about it.

Mr Lourie: I guess my simple explanation, which may have been lost in there, was that the composition of the committee is represented by individuals and organizations that either want to supply electricity at the lowest cost possible or essentially purchase electricity at the lowest cost possible. They're motivated by pure market forces, and in my view either don't recognize or appreciate the difficulties of funding even cost-effective energy efficiency in a competitive marketplace. There are well-known barriers that prevent it from happening, and the composition of the committee isn't such that they delved into that issue.

Mr Galt: In other words, just plain money. They just don't want to spend that extra 1%.

You used the example of a building and the developer. I didn't follow through on how money might be collected there to encourage that developer to put in the more efficient windows etc. Would you see the whole construction industry be charged the 1%, or were you using that as an example where this 1% on electricity would be used to encourage the developer rather than being used purely for research purposes?

Mr Lourie: Right. That's an example where you could, for example, provide an additional loan guarantee that a bank might not be willing to carry for the upfront additional costs that could be paid off over time through the energy savings. It does happen to some extent now; it's called energy performance contracting. But there are still many examples where companies either won't be loaned that additional amount or they're just not interested in putting that additional amount into the building up front.

Mr Sean G. Conway (Renfrew North): Mr Lourie, good to see you again. I want to agree with Ms Churley: It is a very good brief and you have been extremely helpful in fleshing out the particulars of an idea that has been mentioned by other presenters over the last number of days.

By the way, before I begin a question, I particularly liked the bottom of the second paragraph on page 6. Having been around here for as long as I have, I certainly agree that there is a certain paradox and irony in the fact that those who insisted that Hydro make the big investments are now very reluctant to see a systems development charge, apparently.

Two questions: One, if you were to look across the restructured electricity world, which jurisdiction would you cite as having developed the most efficient, cost-effective systems development fund? Where would we go to see a very good model of what we would want to emulate?

Mr Lourie: It's early days. In New England they've done some good work, in Massachusetts and in New York, and the California example would be good to look at in terms of the kinds of activities they plan to fund and its structure. My understanding is that in California things are very heavily regulated still in terms of how things are being done. There's a lot of bureaucracy around it.

Mr Conway: I appreciate that, and I very much like your idea. Philosophically, I find it extremely attractive. What I would be concerned about is boondoggle, that it's just another well-intentioned scheme — and I agree with you; I would like government as removed from it as possible, because no matter how good the intentions of government, it seems to me we're just too big and too awkward and sometimes not as well motivated for long-term results as we should be. On behalf of those 11 million customers who I suspect would like this, would certainly like the results of this, how do you protect me against boondoggle, a good idea gone amok?

Ms Churley: Like nuclear power.

Mr Conway: I'm thinking about some of the energy efficiency schemes that were well intentioned but just didn't quite deliver.

Mr Lourie: I would like to think that the primary way of doing that is by having an independent board that would be well represented by all the stakeholders who have an interest in seeing effective energy efficiency go forward, not by having direct political influence on it but by having as well a mechanism whereby you would be reporting to the Ontario Energy Board on a fairly regular basis.

Mr Conway: You make that point in your brief and I'll have to accept it. The caution I have, though, quite frankly, is that the farther down this road I go I keep looking for the independent person, the virtuous, disinterested, dispassionate individual. Boy, present company excepted, they're getting very hard to find, because the real and potential conflicts of interest around this energy deregulation or re-regulation become more manifest with every passing hour. I hope we can find enough independent people to do what you want done.

Mr Lourie: The Energy Efficiency Alliance is a good start.

The Chair: On that note, it is a good start to our day. Thank you very much for coming before us. It's an excellent brief, I think all my colleagues will agree, and one that we will give serious consideration to.

1930

POWER WORKERS' UNION

The Chair: Now calling representatives from the Power Workers' Union, please. Good morning.

Interjections.

The Chair: As you can see, the committee is really excited that you're here before us now. Welcome. As you know, you have 30 minutes for presentation time. Please begin by introducing yourself formally for the Hansard record.

Mr John Murphy: My name is John Murphy. I'm the president of the Power Workers' Union. We represent about 15,000 members in Ontario. The vast majority of those work at Ontario Hydro. We represent about 70% of Ontario Hydro's workforce. The remainder work in a number of municipal utilities as well as some in Atomic Energy of Canada and some telephone companies as well.

We appreciate the opportunity this morning to share our views with the committee, and what I'm going to do is try to limit my presentation by focusing on the summary of recommendations that we have.

The PWU supports the general intent and direction of the legislation but feels it can be improved in a number of ways that advance its intent more effectively. The complete discussion of recommendations is tabled in our presentation.

We're going to, in our presentation today, cover six categories, those categories being successor rights and employee representation, pensions, electrical inspection, regulatory authority, consumer equity, and energy efficiency. We have nine recommendations associated with those six categories.

Beginning with successor rights and employee representation, the bill is silent on the mechanisms by which the existing union representation will be continued, either in Ontario Hydro's successor companies or in municipal electrical utilities, nor does it provide a process for resolving restructuring transactions, such as mergers and acquisitions, which involve more than one union. The PWU recommends that the process set out in Bill 136, the Public Sector Labour Relations Transition Act, 1997, as it has already been approved for similar situations by government, labour and employers, be the process applied here also. Accordingly, the following new section should be added to the Electricity Competition Act. This is our first recommendation:

"Notwithstanding any other provision of this act, the Public Sector Labour Relations Transition Act, 1997, shall apply to all transactions carried out pursuant to this act and shall continue to apply, notwithstanding any of its provisions, until such time as a regulation is made terminating its applicability."

The bill protects, among other things, contracts of employment when employees are transferred to new entities as a result of restructuring. For purposes of clarity the PWU recommends specifically mentioning collective agreements as similarly protected. Our second recommendation is to amend the noted sections of the act and add the words "or collective agreement" after the word "insurance" and before the comma at the end of each provision, to include collective agreements.

The bill permits the government to exempt by regulation the applicability of any other statute to Ontario Hydro and municipal utility transfers. To ensure labour stability,

labour relations statutes should be exempted from this power, we believe. That comes to our next recommendation, which is to amend sections 124 and 146 and add the words "not relating to labour relations" after the word "provisions" in each of the two sections. That covers the first category we would like to provide our feedback on.

The second category deals with the issues of pension rights. The bill provides that municipal utility employees' participation in OMERS may continue when the utility becomes an Ontario business corporation, which it must do within two years under the bill. However, participating in OMERS is at the election of the new corporation. The same scheme applies to these corporations, if any, when they are subsequently privatized. The new employers could withdraw from OMERS without even consulting the affected employees. The PWU believes that, at a minimum, employer-employee consultation on this issue should be required. This can be achieved by regulation and should be added to the list of areas in which the Lieutenant Governor in Council can make regulations under the act. Our recommendation is to amend the identified section of the Electricity Act requiring employer-employee consultations with respect to continuing membership in the Ontario Municipal Employees' Retirement System in relation to any transaction under this act.

Again under the heading of pensions, there is a number of sections in the bill relating to the fate of the Ontario Hydro employees' pension fund. Inexplicably, the bill establishes a unique pension regime for Ontario Hydro employees, one that is specifically exempted from parts of the Pension Benefits Act. This new regime will likely have the effect of taking away very significant pension rights long enjoyed by Ontario Hydro employees and, at the same time, deprive them of rights enjoyed by other employees in Ontario under the Pension Benefits Act.

For a full discussion, we have identified it in our brief, but it may be worthwhile just highlighting some of what we see as inequities that would be created for Ontario Hydro employees covered by the Ontario Hydro pension plan versus everybody else in Ontario who would be governed by the Pension Benefits Act. Consistent with the direction of this legislation to create a level playing field, we think it's important that Hydro successors do not have an advantage in this respect over some of their competitors and that there's a sense of fairness at the same time for employees who will work for Ontario Hydro's successor companies.

As an example, the legislation contemplates having unique legislation governing the Hydro successor pension fund. It would specify that the financial corporation pension fund is not a multi-employer pension plan for purposes of the Pension Benefits Act, when clearly it is a multi-employer. We're creating a number of different employers. It is a multi-employer pension plan.

Another example is that the legislation specifies that the employer is the administrator of the plan. It specifies that the employer, in its sole discretion, may take contribution holidays and it specifies that the costs of administering the pension fund are payable out of the fund. We

believe it's not only unnecessary to enshrine such provisions in legislation; it's also undesirable from a public policy perspective. Generally, such provisions appear only in the terms of the pension plan documents and can therefore be changed or negotiated as circumstances warrant. We believe having that sort of flexibility is important, especially given the magnitude of the change we're likely to go through in the next number of years with the introduction of competition.

That brings us to our recommendation with respect to the Ontario Hydro pension plan. We have identified various sections of the act that we suggest should be deleted to essentially have the effect of bringing the Ontario Hydro successor pension plan in line with every other pension plan under the Pension Benefits Act. We're not asking for any advantage over anybody else. We're simply saying that the same rules should apply.

The third category we'd like to cover is electrical inspection. The bill transfers authority for electrical inspection in the province from Ontario Hydro to a new Electrical Safety Authority. The structure of the ESA is not specified. The PWU endorses the recommendation of the working group on electrical inspection and safety in Ontario in this regard, provided that affected employees are treated in the same way as all other Ontario Hydro employees. We therefore recommend that the Electricity Act be amended by adding a new part after part II that creates the Electrical Safety Authority as a stand-alone not-for-profit corporation having the rights, powers and privileges of a natural person and not being a crown agent. The definition of "Electrical Safety Authority" in section 2 of the act should be amended to read "means the corporation designated as the Electrical Safety Authority" in the appropriate part of the act; also, ensure in whatever the appropriate part of the act is that the employees transferred from Ontario Hydro to the ESA are covered by exactly the same transition provisions that apply to all other Ontario Hydro employees; in other words, that there isn't a disruption to their employment provisions as they transfer to this new entity.

The fourth category we'd like to provide comments on deals with the regulatory authority. The bill gives the government very broad regulatory powers to give it sufficient flexibility to respond to the needs and expectations of the new electricity marketplace and its stakeholders. But this power should not be exercised without a reasonable degree of consultation with those who will be affected by new regulations. The Minister's Electricity Transition Committee, which is representative of all stakeholder groups, is the ideal forum, in our view, for ensuring that appropriate consultation has taken place.

0940

The bill appears to allow for any further regulations made pursuant to part IX to prevail over any inconsistent provisions of the Electricity Act or any other provincial statute. It does not seem fair to the marketplace, which is responding to the vision contained in the white paper and Bill 35, to allow regulations that are inconsistent with that vision. We therefore recommend that the bill be amended

to specifically provide that the proposed regulations must be received and reviewed by the Electricity Transition Committee prior to receiving final approval by the Lieutenant Governor in Council. We think there is a lot of value to that because of the broad stakeholder group that's represented on that electricity transition committee. We also believe that this recommendation can have a sort of sunset clause, that it can in fact be eliminated after the initial marketplace structures and rules have been implemented, such as on December 31, 2000.

The next area we would like to cover deals with consumer equity. We feel very, very strongly that this is a critical ingredient to help make this legislation work for a number of reasons, not the least of which is the whole issue of public confidence and public understanding of what's being attempted to be achieved through this legislation. We think this is a critical area to be addressed.

Recent experience from California, the first large US state to completely open up its electricity market, suggests that residential and other small consumers are not benefiting from competition proportionately as much as large customers. This may have implications for Ontario, especially in low population density areas of the province.

Our recommendation has two parts to it. The first is that in its further refinement of this bill and in the development of regulations in the future, the government should carefully consider how applicable the California experience may be to Ontario and take appropriate steps to mitigate its imbalance in the benefits of competition from happening here. In this regard, special attention should be given to the net impact of competition on electricity rates in agricultural and northern regions of the province which are especially vulnerable to being "orphaned" in an otherwise active marketplace that is focused only on urban and large commercial and industrial customers.

While the PWU fully expects the introduction of competition to eventually drive down rates through improved efficiencies, there is a need to address the concerns of consumers whose rates could be adversely affected over the transition phase, and we think it's important to specify that our primary concern is over the transition phase. The government should ensure that it has the power, either through existing general powers or through specific amendments to Bill 35, to mitigate rate increases to customers through the introduction of a rate cap. The assurance that rates will not exceed current levels will provide customers with the confidence required to improve the overall acceptability of the introduction of a competitive electricity market in Ontario.

I just want to add to that recommendation. Specifically, we're attempting to address the issue of public confidence in terms of, "What is going to happen to my rates?" That's the basic question that needs to be addressed to restore public confidence. "Are my rates going to go up or go down?" This is an attempt to say that the government clearly has a broad public policy issue of ensuring — in fact, the whole purpose of making these changes and introducing this act is to make electricity more cost-

effective in Ontario. But the government also would be saying, if this recommendation were adopted, that it will be watching, and in the event that this does not happen for whatever reason, that there's a safeguard in place in terms of the government being able to intervene to address the issue of rates.

We're not talking about controlling or putting a cap on the cost of a megawatt of electricity, because that varies from minute to minute or from hour to hour in a competitive marketplace. What we are talking about is trends, annual trends if you like, the end rate cost of electricity that's being looked at. We really feel strongly that a recommendation of this or a variation of it would go a long way to addressing that issue of consumer confidence around this bill.

Our last recommendation deals with the issue of energy efficiency and it's pretty consistent with the recommendation that was made by the speaker prior to me, Bruce.

Energy efficiency: While renewable energy technologies should be supported, it will take many years to displace a significant amount of non-renewable generation. In the meantime, a major energy efficiency program in the province would be the easiest, fastest and most effective way to protect the environment and reduce Ontario's aggregate energy bill. It would also create thousands of high-value jobs. Restructuring provides us with the opportunity to establish a funding mechanism for this objective.

This is our final recommendation: that we allocate a small wires charge to an energy efficiency fund for the creation of an energy efficiency industry in Ontario. While this charge would be small and the overall dollars would be relatively small associated with creating the fund, with the potential benefits from such a fund, as you heard from the previous speaker, the potential benefits of reducing up to \$1 billion of the energy bill in Ontario and the spinoff effect that would have on the economy as a whole in Ontario, we think it would be really worthwhile looking at in terms of this recommendation.

Thank you for the opportunity. I'll be glad to answer any questions you may have.

The Chair: Thank you very much. We have four minutes for each caucus. We'll begin with the government caucus.

Mr Steve Gilchrist (Scarborough East): Thank you, Mr Murphy. It's good to see you again. I really think it's important to put on the record, and I say this I'm sure on behalf of all of my colleagues, that we genuinely appreciate the perspective that you personally and your union have taken in the dialogues that have taken place so far. I know you're continuing to be actively involved in the minister's transition committee and I appreciate that.

Again here today in your comments you've taken a more societal view and a less myopic view. Not to drive a wedge in any way in the union movement, but yesterday when Mr Ryan tried to suggest that he spoke for more electrical utility workers than you do, I felt constrained to correct that impression. I really do appreciate the fact that throughout all of this you've made not only the comments

you've made here today — by the way, just as an aside, there are a couple of things in your presentation that perhaps I could just make very brief comments to. In the case of electrical inspections, right now the legislation would provide for the option that you're putting forward there as is, but in every case we'll certainly undertake to take your suggestions back and get a very good explanation from the bureaucrats of why they can't be accommodated or, preferably, hopefully they will.

What I'd like to explore with you is something that wasn't in your presentation, that throughout this process you've also expressed a willingness to be an active player in the actual management and operation of these plants. Coming from a background where the Canadian Tire stores have a profit-sharing plan that makes their employees very much co-owners of the business, I would be hypocritical in not suggesting that is a laudable goal, and, even further, your comments about private participation as well.

I wonder if you'd just care to discuss the opportunities that you see existing in the next few years for greater involvement of your members, and the best possible job security, becoming part owners, and of the private sector as well.

Mr Murphy: I'd be happy to. In terms of just the overall approach we've been taking as a union, we feel very strongly that for the 15,000 people we represent who have worked directly in this industry that's being significantly transformed, it's really important to take a pragmatic approach to looking at the issues, to not just be critical of changes that are coming up but to try to be part of the change, part of the solution and try to address it, because ultimately they're the ones who are going to have to live with the results of this new, transformed electricity industry that we're heading into. That's why we've been spending a lot of research and a lot of time looking at the issues and hopefully we've been effective in trying to influence some of the changes.

In terms of the opportunity for participation, we're absolutely convinced that one of the key ingredients for an effective organization, either in the public sector or the private sector, is the opportunity for people to have a sense of ownership of the company they work for. Having a sense of ownership we think involves things like being able to share in the rewards of a company as well.

One of our objectives as a union is not only to try to get more say in the running of a business, because that's also important, we think the knowledge base that workers have in any industry is very valuable in making it effective as an organization, not only having more say but also having people have an actual stake in that business as if it were their own business. If people came to work with the sort of sense that, "Look, this company is more efficient and more effective; I'm going to do better out of it as well," we think there's a lot of value to that. Certainly our approach as a union will continue to be, even more aggressively as we move into a competitive marketplace, to explore ways through collective bargaining of creating more of those opportunities where people will have a stake, ownership

and get rewards associated with the returns on the industry that they're a part of.

Mr Gilchrist: I appreciate those comments.

0950

Mr John R. Baird (Nepean): Could I have Mr Conway's time?

The Chair: He promised he'd be back. To the NDP caucus.

Mr Wayne Lessard (Windsor-Riverside): Thank you very much for your presentation, Mr Murphy. I wonder, if none of the suggestions and none of the recommendations you've made are taken into consideration, whether you still support Bill 35 in the end?

Mr Murphy: The answer to that question is that we do support the legislation, we do support the direction that's been taken. In terms of the recommendations not being taken into consideration, it would depend on to what degree they were not taken into consideration. I'm not trying to avoid the question, but as an example on the issue of how successor rights were going to be dealt with, the bill contemplates a smooth transition for employees. So, consistent with that smooth transition for employees, we're simply saying that there are some things that may inadvertently need to be fine-tuned to allow that smooth transition. If these recommendations not being implemented meant that the interpretation was going to be that there would be a disruptive transition for employees, then obviously that would cause us to have to reconsider our support for the bill.

Mr Lessard: One of the recommendations you made is the Ontario energy efficiency fund, which is one that I think has a lot of merit. We've heard similar suggestions from a number of people. One of my concerns about Bill 35 is that it talks about introducing competition into the Ontario market. To me that translates into more generators from either inside Ontario or from outside of Ontario producing more power to sell into Ontario, and theoretically that is power that would be produced by people who weren't members of your union. This bill really provides encouragement for more energy to be sold in Ontario by a number of different people. It doesn't encourage conservation because they want more power to sell to more consumers. By promoting more energy efficiency, how do you see that that is going to benefit your membership in the long run?

Mr Murphy: In a number of ways. We believe that it's difficult to continue to look at Ontario from an electrical perspective as if there's a wall around the province. We think that the whole trend across North America is moving more towards a North American marketplace, competition in a North American marketplace, and that's the inevitable direction in which we're heading.

We think, given the fact that the members we represent are highly motivated, are highly productive, that we have cost advantages that are significant in Ontario relative to a lot of our neighbouring US utilities, that opening up competition will open up new opportunities for Ontario generators to compete in that market, to sell power into that market. We're not concerned with competition from that

perspective. Will there be some dislocations? Absolutely. Will those dislocations be offset by new opportunities, new markets that we gain? We believe the answer to that is yes.

In terms of the energy efficiency fund, the reason why we suggested that is because — you're correct — in a competitive marketplace people are going to want to sell as much power as they can. That's why we've suggested that to address the issue of energy efficiency, there needs to be a separate charge, a separate fund and a separate focus group that are going to be mandated with the task of trying to help industries and consumers become more energy-efficient.

Mr Conway: John and colleagues, good to see you. I must say, John, there is a charming Celtic calmness to your presentation today, a protest movement becalmed.

Mr Baird: Like Mr Gilchrist's questions.

Mr Conway: I'm sorry I was out. It's a very good presentation. I'm particularly attracted to your recommendations around consumer equity and energy efficiency.

But let me come to a specific point that underlies a lot of what we're about, that yes, competition should deliver some benefits; yes, a more rigorous and transparent regulation of this electricity business is a good thing, both of which I support and I think there's broad support in the committee and in the country. But in the short term perhaps the single biggest challenge we face as a community in Ontario is what to do with the massive and underperforming assets at Ontario Hydro Nuclear. Can you update the committee from your point of view as to what is the progress or ongoing lack of progress with the implementation of the nuclear asset optimization plan? Quite frankly, if we don't get better performance or better answers around Ontario Hydro Nuclear's troubled situation, many of the benefits of competition are certainly going to be delayed, particularly for the 11 million residential and farm customers across the province.

Mr Murphy: In terms of the nuclear asset optimization plan, and the short time available to comment on it, I think I'll try and summarize it like this, Sean, by saying, are we better today than where we were before the nuclear asset optimization plan was started? Absolutely yes. Have we made progress? Yes.

Mr Conway: Can you be specific as to how and where?

Mr Murphy: I can in a second, Sean, but just to keep with the question, are we as far ahead as what the plan envisioned? No. Are there areas where we're behind? Yes. That's in terms of where the nuclear asset optimization plan is.

The one thing that's absolutely clear, I believe, in terms of the members I represent, is that heading into the competitive marketplace that we're heading into, apart from the huge impact on the province as a whole, everybody understands that nuclear recovery is an absolute must. But to be fair, I think that recovering Ontario Hydro nuclear reactors — it took a long time for them to get into the problems they're into and there aren't any snap, magical, easy, quick-fix solutions to it. I think it's very complex.

It's been off to a rocky start in some respects but I do think the plan is working, I think it's coming together and I think it will be successful.

Mr Conway: My final question then is simply this: Everyone who has looked at this policy, and particularly the Macdonald committee, the advisory committee appointed by the Ontario government which reported two and a half years ago on the structure of electricity competition in the province, and more recently another special committee, the Market Design Committee — both of those special government advisory committees have told the people of Ontario that to get the benefits of competition there must be a further breakup of Ontario Hydro's massive generating capacity beyond what this bill contemplates. With that in mind, with that very specific advice in mind, can you comment on how, if we are to have a further unbundling of Ontario Hydro's generating assets, we deal with the Ontario Hydro nuclear generating assets which are, as you know, at least 60% of the generating assets of Ontario Hydro?

Mr Murphy: Personally, Sean, I don't support a further unbundling of the generating assets, not because of any impacts on our members or disruption or anything but just simply because of the fact that if you look at what's happening in the world around us, in the private sector out there, in the banking communities and in every other industry, the common driver is that if you're going to be in a competitive marketplace, size is important. Organizations are coming together, they're merging so they can get the efficiencies of mergers, and at the same time we're looking at Ontario.

Again it's the concept of, do you look at Ontario as a wall around it in terms of the electricity market or do you look at it in terms of the North American marketplace? We look at it from the perspective of being a North American marketplace and we say that if you're going to be effective in the North American marketplace, you'd better be big enough to compete. Everybody understands that. Most of the residential customers out there understand it. They understand why Wal-Mart is successful, why Home Depot is successful. Size is important if you're going to be a player in a competitive marketplace.

I don't support further disaggregation of the generating assets. In fact I'd go even further. I'd suggest that it would be in Canada's long-term interests — it may not be politically expedient to do it — to look at further associations, stronger ties between Ontario Hydro's successor generating companies, Manitoba Hydro and Hydro-Québec. If you really wanted to look in terms of being effective in the North American marketplace, that's the direction I would be moving in rather than becoming smaller. We'll get eaten up by the competition if we break up our generation further.

Mr Baird: I wonder if I could ask just a quick point of clarification, Madam Chair, and maybe it could be just for the committee's deliberations: On recommendation 4.1.1, if it would be possible to get a definition of the word "consultation," that might assist us in our deliberations

Then second, on 4.2.1.1, these are important issues with respect to pension rights that I can appreciate are important to people's economic security. If there could be some more specificity on the basis for the changes and the background of those parts, I would welcome it.

Mr Murphy: Sure. As to the question on consultation around changes to the OMERS pension plan, the reason we've used the word "consultation" was to cover the variety of circumstances we find ourselves in. In a unionized environment, consultation we would envision as being two-party negotiations, that the new successor employers and union would sit down and negotiate whatever changes they wanted, the same as they do on the other provisions of the collective agreements.

Where there isn't a specified provision in a collective agreement, because a lot of municipal utilities, in particular some of the smaller municipal utilities, would not have specified the OMERS pension plan in their collective agreements because they just would have gone on the assumption in the past that you're automatically going to be part of the OMERS pension plan, in those cases what we would suggest is some sort of provision that would say that when the collective agreement expires, there would be protection to allow continuation in the OMERS pension plan till the collective agreement expires, so that both the union and company can decide whether or not they want to negotiate a continuation in the plan.

1000

In the non-unionized environments — and that's why we have the word "consultation" in there, to cover the full gamut — we would suggest whatever the normal consultation process is within the non-unionized environment, that should take place as to whether or not continuation in the OMERS plan would continue.

Mr Baird: I appreciate it. Thank you.

The Chair: Thank you for coming before us, gentlemen. What happens in this transition and all these changes will clearly affect a number of your members very directly and we thank you for your best advice in this matter.

Mrs Helen Johns (Huron): Madam Chair, as a point of clarification on Mr Lessard's question, I think he needs to recognize that subsection 87(1) in the Ontario Energy Board Act is there to enhance environmental standards and allow for more customer options. I just wanted to draw that to his attention for Hansard.

Ms Churley: I think he knows that.

ONTARIO ENERGY BOARD

The Chair: Representatives from the Ontario Energy Board, please. Good morning, everyone.

Mr Conway: Oh, surely the chairman hasn't brought slides.

The Chair: Most of us are looking forward to your presentation.

Mr Conway: You can tell who has been a cabinet minister around here.

The Chair: As you're getting settled, I'm sure you know the ropes and that you have an hour for presentation

time. Before you begin, please be sure to introduce everyone for the Hansard record.

Mr Floyd Laughren: It's good to be back here, so far, and mingle with some old friends. With me this morning are George Dominy, the vice-chair of the board, and Steve McCann, who's the board solicitor. Both have a great deal of knowledge of the bill and of the workings of the boards.

I was also pleased to note in the room this morning the presence of my predecessor at the board, Marie Rounding, who served as a sterling chair of the board for over six years. If your questions get really ugly, I may ask her to give me a hand up here.

We have a number of slides that I'd like to speak to, which go through some of the activities of the board and some of our concerns and challenges as well. I'll make sure that there's time left for questions.

Mr Conway: Yes, that would be rather sporting.

Mr Laughren: I wouldn't want to see Mr Conway not have a chance to express himself.

Mrs Johns: That would be a first.

Mr Laughren: The role of the board is going to change very dramatically because traditionally the board has been an independent regulatory agency, established under the Ontario Energy Board Act. The board regulated the monopoly sale, distribution, transmission and storage of natural gas and did it through quasi-judicial hearings with a lot of attention to due process. That has been the traditional role of the board.

They also reviewed, upon request, Ontario Hydro's bulk rate proposals when requested to do so, as I say, and then would make a recommendation to the minister. That didn't mean that the board had the authority to alter those rates but it could make a recommendation to the minister.

It was driven by the public hearing process, very transparent and a lot of opportunity for people to have input into it if they wished, and then decisions were brought down with reasons. It was quite a formal process in which the board has been engaged and, quite frankly, still is doing with our natural gas hearings as we speak.

The reason for that was to provide as much public interest as possible and, at the same time, have it transparent for people who would be affected by rates. The existing resources at the board now would allow us to continue to do that. That simply wouldn't be a problem, but as the changes come about, we know that what's there now isn't going to do it.

The new role as envisaged in this bill, and I'll be very careful not to be contemptuous of the Legislature in anticipating the passage of this bill —

Mr Conway: Surely governments are so flexible.

Mr Laughren: Yes — but as this bill is written, it really expands enormously our responsibilities and our mandate, both for gas and for electricity. I'd like to speak for a moment on the natural gas side because I think sometimes we get caught up in all the changes around electricity and forget that natural gas is an important part of what's regulated in this province on the energy side.

One of our responsibilities is to try and bring greater regulatory consistency between these two sources of

energy, gas and electricity, and to establish rule-making authority so that there is consistency. For example, it's not inconceivable to think that in the future people will buy energy as opposed to having a mindset that they're either into gas or electricity. They'll be buying energy, so we need to have consistency in treatment. Whether it's the marketers who sell electricity or sell gas, we want to make sure they're treated as consistently as possible whether it's expanding a gas line or a transmission line. We want to bring consistency to the whole process so people understand that.

The same with rule-making authority, which could establish, for example, codes of conduct for affiliate businesses, whether in the electricity field or in the natural gas field, so that investors, for example, understand that very clearly.

To bring more flexibility in establishing rates, right now rates are established through this quasi-judicial rate-setting process of very complex hearings by the board. It's very time-consuming and complex. This bill encourages us to have more flexibility, and I'll talk about it in a moment because there's a new process — well, new to me anyway — called performance-based regulation that's going to allow us to be a lot more flexible in doing this.

We're also going to need to be able to set conditions of service because if we just allow price to drive it, then you could have a situation where price would be low, but it would be low because of poor service and we don't want to be encouraging that, so that's going to be part of our mandate as well.

We are going to license agents, brokers and marketers in electricity and in gas. People around this table more than most know the problems with marketing of natural gas and potentially electricity. I know I've had letters from some of you on that and I'm sure your constituency offices as well because, right now, we have no jurisdiction over that. If they break the law, they're subject to the penalties that way, but right now, the board certainly has no jurisdiction over the marketers and their practices.

1010

I want to ensure that there's a rational system expansion. For example, if right now a gas line is to be expanded, they need permission from the board. The same will apply with electricity, because you don't want a utility expanding at enormous cost when it doesn't make sense. I think they call it in the trade gold-plating a system. Then all the ratepayers pick up the tab for that. So it has to be rational expansion, and not just expansion to make a bigger empire.

Mr Conway: Keep Ontario Hydro out of this for the moment.

Mr Laughtren: I wanted to talk about electricity licensing. That's going to be a very important part of the changes that are going to occur. There is a two-stage approach, because we're doing interim licences. We're working on that now. We've sent out a consultation paper and we're really trying to get a handle on that. It's something we've never done before; this is completely new for us.

We're doing interim licences now, which we hope to have done late this year or early next year. When those licences are granted to all the players out there, they will be viewed as interim licences and as an application for a permanent licence when the market opens up to free competition in the year 2000. Our goal is to get those licences in place and consider them an application for the permanent licence.

We'll be licensing the IMO's, the independent market operators that are in the bill. We'll be licensing generation, Genco. We'll be licensing the transmission and the distribution. On the distribution end, there are 270 some municipal electrical utilities, so you can see that there is a lot of work to be done so we can handle that and digest it. We'll be licensing the retailing or the selling of electricity. We'll be licensing the wholesale buyers too. We'll arrange contracts presumably and so forth.

We're going to set up what's called performance-based regulation for the monopoly part. You can have abuse of market power not just at the generation end of the spectrum, but also in the distribution and transmission end. So we'll be setting up performance-based regulation for that, and I will speak in a moment about performance-based regulation.

We are also charged with maintaining rural and remote rate assistance, to make sure that that remains in place. We don't set the rules on that. The Ministry of Energy, Science and Technology will set the rules. Then we'll be responsible presumably for making sure that rural rate assistance remains in place and that all ratepayers help pay for rural rate assistance as they do now.

We will monitor and advise on market power of the various components of the system, whether it's generation, transmission or distribution.

In the electricity licensing, our objective is, first of all, that participants won't be able to function without a licence. That's the rule. They will have to have a licence if they're going to be out there operating. Also, a licence will empower us to ensure that the players comply with the terms of the licence. We have to have that to make sure there is compliance and also so that there's an obligation — presumably this will be part of the licences, although they're not developed yet — to comply with any industry standards or codes. That could be codes on health and safety or weights and measures, things like that, so that there's an industry standard or code and people can't get around it. The licences would make sure of that.

Also of course, there's an obligation to provide access and service to customers. We can't have people not being serviced just because there's a competitive market out there. We have to make sure that that's in place. This is a bit in-house, but the whole administration process of licensing is an enormous challenge for us at the board. That has to be set in place, and that's a major task for us. I know it's not your concern at this point, but it's something we have to work very hard at.

When it comes to the board's role on rates and their facilities, we are shifting from a very prescriptive regulatory process to a much more flexible one. We at the

same time have to make sure we have transparency and public participation in it. That's not an easy task. It would be pretty simple just to make decisions at the board, but that would be unacceptable, particularly when people are used to a very transparent process there and a lot of due process in place. We're going to have to make sure that we continue to have public participation. We've done a lot of it already on the natural gas side and are starting to do it on the electricity side through consulting all the stakeholders out there.

We are going to approve or fix just and reasonable rates for electricity transmission and distribution utilities. You can imagine that that is in itself a task, to set those rates. The board has never done that before. Also, we will utilize flexibility in approving any system expansion in electricity.

I want to say a word about — I keep using the term "performance-based regulation." What we really mean is that rather than setting rates based on costs to the utilities and so forth, we'll say to the utilities, "You can have some flexibility, but you must achieve certain performance levels and standards, and if you do that, OK, you're fine," and the board will monitor that. It's incentive-based so that they have incentives to provide quality service and reasonable prices as well.

It will mean fewer hearings, no question about that. Can you imagine us holding hearings on 270-some municipal electric utility licences? I know we couldn't handle it. It will be more flexible for written hearings, oral hearings, tried hearings and so forth. We will try and make it as transparent as we can and then monitor their performance. That in itself again is going to be a major task for the board to try and monitor those. Once the expectations have been set up, we have to monitor them to make sure they're achieving them.

All the municipal electric utilities are going to be licensed. In order to be licensed they will, as a condition of the licence, have to determine what their business activities are and tell us. They'll have to determine what their geographic service area is. They'll have to prepare a cost-of-service study. Their rates then will have to be approved by the Ontario Energy Board. They must separate their monopoly services from their competitive service, in other words, the wires from other aspects of their business, so we know there's not a cross-subsidy from the monopoly to the competitive side. We have to be sure of that.

The board will have authority to examine and comment on and change amalgamations, mergers and acquisitions. That will be part of the process. If a couple of the utilities, or three or four or five, merged, for example, they would require a new licence as a result because they would be a new creature and would have to get their licence from the board. We will also have to make sure there's non-discriminatory access to the wires because that's part of the new world.

I want to say a word about market power. The board has some authority in this regard. We can review potential or perceived abuses of market power in a number of ways. One is that the minister can request the board to

investigate abuses of market power at different levels, whether it's generation or transmission or distribution. As you may know, the IMO has what's called a technical panel, and they will be watching for potential abuse of market power. We can act on a report from them as well, or if the board itself saw that there was a problem, could comment on it as well. We license the generators and the others so that we can alter licences according to behaviour as well, and that is part of our responsibility.

1020

We must implement government directives concerning the market rules and licence conditions to mitigate market power concerns, and that's part of our job. We can impose conditions onto the licences. We cannot require divestiture on the Genco side. That's forbidden in the bill. I think it's section 69. That cannot be a condition of the licence.

There are some key challenges for us.

First, we must establish relationships with new market participants, because the board has never had to deal directly with all those municipal electric utilities. That's going to be a challenge for us, to develop a working relationship with them, the same with the gas marketers, the electricity marketers, all those participants. That's a challenge for us to develop that.

Second, and this is an important challenge as well, we have to manage all this change and the growth in the board with an aggressive implementation timeline, much more aggressive than any other jurisdiction we know. We're being asked to do this very quickly. For example, the licensing of everyone: We want to get the gas marketing licences done this calendar year. We have to draft licences for next year, the first quarter, we hope. An appeal process has to be set up, because people can appeal decisions of the board and so they should be able to do. We have to develop rule-making powers. We have to develop the rates for Servco. They're going to need to know their rates for rating purposes by the bond rating agencies, those wonderful folks, as I recall, and the rates for Genco as well.

We are going to need the necessary resources to do that. We've already had approval from Management Board for a major injection of money and people for the board, but that takes time to get through the process to get people hired, and they don't always hit the ground running either. That's a struggle for us, but we do have money in the board budget for outsourcing for expertise too, because those people just don't materialize instantly just because you have the money to hire them.

There are also a lot of internal tasks that I won't bore you with but that we're working hard on at the board. I already mentioned that we've done a lot of consultation with the gas industry already and now there's a paper out on electricity licensing as well. That's due back by the middle of September from the stakeholders out there. All the municipal electric utilities are themselves engaging in a process of consulting district by district, as they call it, and we are taking part in that. Mike McLeod, who's in our strategic services division, who's here at the slides, takes

part in that, as well as others. We are taking part in that to make sure we're consulting there too.

We've got to develop new rules and guidelines and processes and make all of it work, including monitoring. That's going to be a big task for us, monitoring all of this once it's done, and at the same time ensuring efficiency and effectiveness and ensuring symmetry between natural gas and electricity so that there's a level playing field, and also that there's regulatory certainty. I think that's important for people who have never before invested in energy in Ontario. I'm thinking of generating or retailing or wholesaling, whatever. There needs to be certainty so they know what to expect when they come here, when they develop something here in the province, that there's going to be certainty there so they know what they're doing and what to expect.

Those are most of the challenges we face. There may be some concern about whether we can do all this in the time we have. We think we can do it but it really is a challenge for us. I wouldn't give you any other impression. We have a good staff at the board and we're working very hard, and we have had co-operation on getting new resources and so forth from Management Board. So we think we can do it. We are going to work very hard at it and make sure we accomplish our objectives.

Thank you, Madam Chair.

The Chair: Thank you very much. We have 10 minutes for questions from each caucus. We'll begin with the official opposition.

Mr Conway: Thank you very much, Madam Chair, and thank you, Mr Laughren and colleagues. It was a very helpful presentation. Let me get to my questions.

Mr Chairman, you have said in your presentation that as a result of Bill 35, the roles and responsibilities of the Ontario Energy Board, to use your phrase, "expand enormously." I think that's obvious. My question, and you touched on it briefly, is what kind of additional resources, financial and otherwise, do you particularly expect you will require over the next three to 24 months to bring about an orderly transition from the monopoly market to the competitive electricity market?

Mr Laughren: That's exactly what we're struggling with, and it's an appropriate question. The Management Board submission that we had approved very recently gives us 18 new people we can hire who will help us. A lot of this is in the licensing area, which is so totally new to us. We need more space, and we're getting that, in the same building, as it turns out, which is helpful. That is in this fiscal year. You said up to 24 months, and we think we'll need more people after that. Quite frankly, that's all we can digest at this point, that number of people. The other thing we'll need is money, because I believe we'll need to do a lot of outsourcing to get expert help, people who've worked on these kind of exercises in other jurisdictions who can help us with developing licensing and monitoring and so forth. Those are the kinds of things.

Mr Conway: I appreciate that. Let me, in the limited time we have this morning, cut to, for me, one of the essential questions. As a member of the Legislature and as

a member of the Ontario public, one of the aspects of Bill 35 that I really like is a much more transparent, rigorous and meaningful regulation of the energy sector, not just gas, but electricity, for the first time.

I've been thinking about the broad base of residential and farm customers that you, more than anyone, are going to have to protect through a lot of shark-infested waters. It is no secret that this is a multi-billion-dollar business. The electricity business alone in Ontario is a \$10-billion business.

If I look at the literature in the United States and in Great Britain, one thing is clear. This kind of policy, particularly with the disposition of public assets or the allowing of private interests into a vast marketplace like electricity has had the capacity and continues to have the capacity to make millionaires overnight, to make fortunes over weekends. The literature is very rich on that subject, and not just in the United States but in the United Kingdom as well.

As an average Ontario citizen, taxpayer and electricity customer, you, Mr Laughren, and your colleagues are a very important part of my protection. The bill sets out a number of opportunities you have to rigorously regulate and protect the public interest. I think that's a good thing, but there are problems.

1030

One of the problems I struggle with is evident conflicts of interest. The government of Ontario — and I don't mean this as a partisan criticism; you and I have been in government. But I look at the sections of the bill that touch on the Ontario Energy Board. I look at sections 26 and 27 of the Ontario Energy Board Act, 1988, and I see that the provincial government of Ontario has given itself a clear directive power around a whole range of important policy questions. Why would that be important? It might be important because, among other things, the successor companies to Ontario Hydro — Genco and Servco — have one shareholder, and that shareholder is the government. The government, therefore, is in a clear conflict of interest, because it's got a pecuniary financial interest in the health and wellbeing and the commercialization of Genco and Servco.

Then I go back to the Electricity Act and I look at subsections 87(1) and (2). Before that, actually, the whole subject area about special charges to write down the residual stranded debt, the multi-billion dollar stranded debt — what do I see there? You're a former Minister of Finance. It's clear under this legislation that the Minister of Finance is going to make a critical call around how much residual stranded debt will be dumped on the backs of the broad base of electrical consumers. He'll do that only after he accepts a valuation of companies in which he is the principal shareholder — another conflict.

Then we come back to not only the call about the residual stranded debt, which he alone makes; he alone also makes the call as to when it is paid off, and when it is paid off, under sections 85, 86 and 87 of this bill he, the Minister of Finance, begins to receive new electricity taxes that are going to provide to the government of

Ontario, once the stranded debt is paid off, I presume hundreds of millions of dollars of annual revenue, about which anyone who has ever been or ever would hope to be a Minister of Finance would understandably salivate.

I only cite these as examples of conflicts of interest that are real and material. I come to this with 23 years of experience in and around the government and the Legislature, so any instinct for Pollyanna I ever had is long gone.

What, Mr Laughren, are you and your colleagues at the Ontario Energy Board going to do to protect the 11 million electricity consumers from the exercise of these conflicts of interest in a way that might be very injurious to rates, particularly rates paid by the millions of residential and farm customers?

Mr Laughren: There are some things we have jurisdiction over and others we don't. When it comes to the whole issue, for example, of market power we have some jurisdiction, we have some say in that.

We do not have a say over the stranded debt and how it is allocated. That is not within our mandate, so we can't do anything about that. Once that has been set up, we can monitor what goes on after that, but we cannot do anything about the rate the stranded debt is set at or how it's allocated, in other words, among Genco or consumers or transmission. We just don't have the authority to do that.

All we can do is make sure — I think the board has done a good job on natural gas. I really believe that, and I believed that before I went to the board, that they did a good job in that regard. The board has a long history of looking out for the public interest in that regard. There is no reason not to; that's our mandate. I think that when it comes to electricity, that will apply. The board will be diligent.

Mr Conway: Within the powers granted to the board, I accept that. My concern is that there are very important exceptions to the board powers. Tom Adams is here today. Tom and the group were with us yesterday. They expressed a concern around section 26 of your act, the Ontario Energy Board Act.

Again my concern is, who is looking out for the interests of the average residential and farm customer, particularly since there are such enormously powerful commercial interests at stake?

Bryne Purchase, whom you know, came to this committee in Ottawa earlier in this week and he said to the committee — and quite frankly, I thought it was very important and somewhat surprising testimony — that one of the most important obligations we had in looking at this legislation, and that the government and the Legislature had generally, was making sure there was very strong governance of the successor companies, Genco and Servco. I suspect the reason he said that — and he was very guarded because he's a very diplomatic fellow. But Bryne knows what you will know: that the opportunities for people running Genco to make private fortunes at the expense of the Ontario taxpayer and the Ontario electricity ratepayer are significant. If you look at Britain and the United States, it is clear how those fortunes get made.

I want to know what protections the board feels it can exercise on, for example, the governance of the successor Ontario companies. Have you got a strategy to ensure that the small, tightly knit boards that are going to run Genco and Servco, multi-million dollar assets in their control that they can do a variety of things with, will not do it in a way that is going to injure and impair important public investments and enrich private citizens to the tune of millions of dollars at the expense of Ontario taxpayers and Ontario electricity consumers?

Mr Laughren: The board does license them and part of the conditions of licensing will be rates. We will monitor that. At the end of the day, we will try very hard to make sure that there are not abuses on rates. If I follow your argument, you're implying that there will be abuses through pricing, and part of our job is to make sure that those don't occur.

Mr Conway: One of my concerns comes back to the question about how you establish the value of, say, Genco and Servco. We've got Midland Walwyn and Goldman Sachs and a variety of good people who lie awake at night worried, their primary concern about protecting the public interest. We all know that. Goldman Sachs doesn't rest without understanding the public interest in all its dimensions. But a critical decision is going to be made around how much of the debt Genco and Servco can make.

You don't have to be Albert Einstein to figure out how important a calculation that is to the opportunities for Genco, on the one hand, in a commercial market, and also how much of this multi-billion-dollar debt is dumped on the back at the first instance, because we get one call at this presumably. There is going to be valuation day, and then these two new horses, paid for by the Ontario government and the Ontario taxpayer over the decades, are going to be allowed to roam in new pastures, and some of those pastures, by Mr Farlinger's own admission, are going to be in Kentucky and Tennessee and Ohio.

I guess that's the question: What does the board have by way of regulatory authority to oversee the behaviour of Genco and Servco in the United States? Another concern I would have is that the successor companies, going around with very substantial public investments, will make every effort to give benefits to themselves and their new American customers, leaving behind a stable full of manure to be picked up by the Ontario taxpayer or Ontario electricity ratepayer.

Mr Laughren: I'll try to respond to that very evocative statement without —

Interjection.

Mr Conway: But Bill Farlinger has said, for example, that they're not going to divest Genco, which is a major problem. But the way they're going to deal with it is that they're going south. They're going to take 40% of their business — I think the average Ontario citizen is going to look at that and say, "I bet the strategy here is that they want to take their new assets, debt-free, into the United States, provide a benefit to American customers and leave a pile of debt behind for ratepayers in Shining Tree and

the Ottawa Valley and everyone else to pick up and pay for."

The Chair: While you're considering your answer, I'm going to let Mr Lessard start, and you can incorporate that.

Mr Lessard: I'm going to use the beginning of my time to give you an opportunity to respond.

Mr Laughren: I wanted to let Mr McCann try it.

Mr Steve McCann: I don't think I can deal with all those issues, but drawing an analogy with the way the board has regulated the natural gas industry in the past, as I think everybody knows, the natural gas industry is somewhat different in its character from the emerging electricity industry.

Mr Conway: I agree.

Mr McCann: It's under private ownership, not public ownership, and is characterized by large distribution companies rather than the large number of electricity distribution companies of various sizes that will emerge. But the point I wanted to make about it is that in fixing just and reasonable rates, which is the test the legislation imposes on the board, the board looks at the costs of the company it's regulating. Those costs include everything from executive compensation to construction of facilities and so forth.

Of course, in doing that the board has to exercise judgment. Regulators are often accused of micromanaging companies, and we don't want to do that. We don't want to get into the day-to-day management decisions because that's a very inefficient way of regulation. But issues such as compensation and so forth can come before the regulator and sometimes do and are issues that can be considered in just and reasonable rates.

1040

As Mr Laughren has indicated, the regulatory methodology is going to be somewhat different in the future, but that's not to say that there can't be scrutiny of these matters. Certainly one of the things that the board feels is very important in the legislation is the fact that all these new companies that are distributing electricity, transmitting, generating, will be companies formed under the Ontario Business Corporations Act. I think the expectation is that they will operate as business corporations and the standard that should be applied to them by the regulator is the same or similar to business corporations. Therefore, at least some of the issues you're raising are proper subjects for the regulator to consider in dealing with the cost and rates that are proposed to be charged by the companies involved.

Mr Lessard: Thank you very much for your presentation. Mr Laughren, I want to start out by clarifying the record. When you said you were pleased to see some old friends here at the committee, you were referring to Mr Conway primarily, who's celebrating his 23rd anniversary in the Legislature this week, by the way.

Mr Laughren: Congratulations.

Mr Lessard: One of the single most important factors in determining whether Bill 35 is going to provide any benefit to residential consumers in the province of Ontario is

the determination of the amount of the stranded debt. One of the things we've been encouraged to do as legislators is to make sure that process is as transparent as possible. The way the legislation stands now is that the Minister of Finance is going to be the person who determines that number. We've been told an army of consultants is assisting him in making that determination, but we've been told by Bryne Purchase, who did some work on how that amount was going to be determined, that no matter what number you pick, it's going to be wrong. The ramifications of that number being wrong are substantial, because it's going to determine whether we really have a competitive marketplace in Ontario and whether we have a possibility of lower prices or not.

Mr Conway asked you what responsibility or impact you may have on determining what the stranded debt is. I take it from your answer that the way the legislation stands right now, you have no influence on how the stranded debt is determined. Am I right?

Mr Laughren: That's correct, but just a word of caution in that regard. If we did have authority or jurisdiction over the stranded debt, and I don't mean this as a flippant answer, I suspect we'd end up having to hire a lot of expertise, and many of them probably would be the same expertise that the Ministry of Finance has hired, to get advice on this. The board does not have in residence expertise in this regard at all, so we would have to go outside to get help to deal with this issue. We just don't have that kind of expertise. We've been a natural gas regulator all these years. We would have to get help, and quite frankly, I suspect we'd end up getting the same kind of advice that the Ministry of Finance will get. At the end of the day, it's their responsibility to take or not take that advice and allocate the stranded debt as they see fit. But you're right, we don't have any authority in that regard. We've got no jurisdiction.

Mr Lessard: One of the things we'll be suggesting in the amendments we've proposed is to give the Ontario Energy Board some responsibility in determining what the stranded debt may be —

Mrs Johns: Even though you don't want it.

Mr Laughren: We appreciate your confidence in us.

Mr Lessard: — not to make that determination but at least to give some transparency to the process, so those who are going to be impacted can at least have the comfort that they've had an opportunity to participate in the determination of that amount, because it is so critical.

It's also been suggested that perhaps the energy board have some ability to oversee the asset valuation, because the asset valuations of the assets of Ontario Hydro — the infrastructure, the power-generating facilities, the transmission facilities and things like that — are going to be critical in determining the amount of the stranded debt as well.

Also, it's been suggested that there may be different rate classes, different types of customers who may be paying the stranded debt at different rates. The other concern is that large consumers of electricity may be able to make good deals and escape paying their fair share of

the stranded debt and residential consumers are going to get stuck paying the biggest bills. We don't want to see that happen, and I think there should be some ability for the energy board or some other regulatory body to ensure that doesn't take place.

This may be a legal question, and it's with respect to clause 126(1)(h) under the new Ontario Energy Board Act. It's with respect to the Lieutenant Governor in Council being able to make regulations. We all understand "Lieutenant Governor in Council" means the cabinet of whatever government may be in place at that particular time. Clause (h) says they may pass regulations "delegating all or part of the powers of the director under part IV or V" to a self-regulatory organization. Part IV and part V refer to the regulation of gas and electricity. I would like to know what your interpretation of that regulation-making power is.

Mr Laughren: That's a good question. That refers to the marketers of gas and electricity, right, those sections? We are charged with licensing those marketers. There's something in the language of the trade called forbearance, which means the board can forbear and allow someone else to do it, or at least not do it ourselves. One of the areas the industry would like to see us forbear on — I don't think immediately, but eventually — is the running of the marketing aspect of it. In other words, the industry would set up a self-regulating or self-managing organization that would police their own members in terms of marketing practices and rules and behaviour. We at the board agree with that.

At the beginning, we're going to set up the rules with the licences and make sure there's proper conduct. We can monitor that and withhold licences and cancel licences. That's in our authority. But at some point it seems to me that the regulator should not have to do that, that the industry should be doing that, policing themselves on the behaviour of their members. That's what that is getting at. I believe the act says we can recommend to the minister, "Now it's time for us to get out of this or to forbear in this regard and let this self-managed organization look after their problems."

Mr Lessard: The concern I have is that that doesn't happen too soon because of the problems that we've seen in the gas marketing business up until now.

Mr Laughren: I understand that.

Mrs Johns: Good morning, Mr Laughren. We appreciate your being here. I'm going to try not to make any comments about our select committee. As we talked about Mr Conway making 23 years in the Legislature, I'd have to say that some of us should have to consider our employment choices along the way.

Mr Conway: In this line of work, fortunately, there's a broad base of the public that helps the cause.

Mr Laughren: But you realize that Mr Conway always had school to fall back on.

Mr Baird: What's wrong with that?

Mr Laughren: Not a thing.

Mrs Johns: I just wanted to raise a couple of issues that we kind of went by with Mr Conway pretty quickly,

because we have some media here, I guess. You did get Management Board approval for the recommendations, the proposals you have, so you're happy with that process that's gone on at this point.

1050

Mr Laughren: Yes. We couldn't survive without it.

Mrs Johns: I would assume so.

Bryne Purchase, when he talked to us — it's funny. We're all going to have to read Hansard, because we all got something different out of his speech, obviously, so I think it's important to go back and have another look at it. But what I got out of Bryne Purchase's statements was that he was talking about having to find efficiencies within Ontario Hydro. I know you would see that as an important aspect, after being on the select committee with me, that there could be some management and employee changes there that would lead to a reduction in costs. Those costs presumably would be found in the generation, in the new Genco, and those cost savings could be passed on to the consumers.

The question I wanted to ask you was, right now I think the Ontario Energy Board has no ability to ascertain the rates that Ontario Hydro charges. You can recommend; you can do things that you wish. In the future that will be substantially different and you'll be more of a monitor on Ontario Hydro's rates. Is that true, and can you explain why you think that's a good or a bad thing?

Mr Laughren: I think it's a good thing because right now all we can do is recommend to the minister that we think these rates should or should not be increased. In the future when we grant a licence to — I'm not sure which part of Ontario Hydro you're referring to or if you're referring to all parts. For example, we grant a licence to Servco, which is the big wires, if I can put it that way. We analyze their costs. They have to bring in their costs to us, and we analyze what those costs are, that they're all legitimate and they are not subsidizing some other part of their operation and so forth. The same applies at the distribution level, the small wires, and to the generation of electricity.

It's going to be a much more intensive look at Hydro on a regular basis as they apply for their licences, the various components of the new Hydro. The board is very good at analyzing legitimate costs, because there's always that debate in the national gas utilities about whether that really should be borne by the ratepayers or whether that cost should be borne by the shareholders, the difference. The board, I think, has real expertise in that regard and will be able to monitor that very closely.

Mrs Johns: That's good, because consumers should feel some protection as we try and get efficiencies wrung out of the old Ontario Hydro, so I think that's important.

Unlike your previous colleague Mr Lessard, I would say that you have lots of experience in dealing with large debt as the Minister of Finance.

Interjections.

Mr Johns: I couldn't resist. I'm sorry.

Mr Conway: Does Steve Gilchrist have a sister?

Mrs Johns: The only point I wanted to make —

Mr Laughren: I knew I should have talked longer.

Mrs Johns: — is that you feel that by the Ontario Energy Board reviewing the stranded debt calculations, that's a duplication of process and you would provide no new expertise to the situation.

Mr Laughren: At this point, I don't think it would make sense for us to go back and also review the stranded debt. I'm quite serious when I say we'd have to go out of house to accomplish that. It could have been set up that way originally, that we would be responsible for establishing the stranded debt and allocating it and so forth; that would be a different matter. Then we would have started from square one and done it.

Quite frankly, I don't think there would be time now to do it either. That's a tough process, the stranded debt one. Just ask them at finance. That's a very tough process, and so it would really use up a lot of time, and we're going to need to know that stranded debt cost in order for us to do rate-setting for Servco and for Genco. They are going to want to know their rates in order to get assessed by the rating agencies and so forth. So that would slow down the process at this point, in my opinion.

Mrs Johns: Yesterday we had Tom Adams here. From my perspective of being in government and energy for the last couple of years, he's helped me out substantially on a number of issues, as I'm sure he did you when you were here. He made some comments yesterday about the policy directives that the government would give to the board and how he felt that would make the process less open or that it would make it difficult or compromise the board.

I'm wondering if you can talk to that issue. I've given him some sections in the intent and asked him to come back to us. I'm wondering if you could comment on what you think about the policy directives.

Mr Laughren: I can give you an instinctive reaction. First of all, because of this whole new world we're facing, the board will need some certainty in our role and policy directives, quite frankly, aid in that regard. Once those policy directives are given and we engage in our activities as directed, then if there was any further involvement or interference — I don't want to use the word "interference" — then that would be inappropriate.

Mr Dominy would certainly know better than I, but I don't think there has ever been any history of interference by any government in the independence of the Ontario Energy Board. I'd be very surprised if any government would do that. That would be inappropriate, but that's separate from policy directives that establish the role of the board and our mandate and so forth. We need that in order to make sure there is clarity in what we're doing and that the players out there understand it too.

I don't know whether you want to add anything to that, George.

Mr George Dominy: The only thing I would say is that I'm not aware of any direct interference, if that's the word you're thinking of, but any regulatory agency, when it is making decisions, clearly has to be cognizant of what the policy framework within which it's operating is. I think, as Mr Laughren has said, if they stated and provided clarity as to what that policy framework is, that is

helpful to a board because then they know the bounds in which they are regulating.

Mrs Johns: Maybe I can add another question to that and you can help me with —

The Chair: I don't think we've got time.

Mrs Johns: I'm running out of time? Then I've got to change my whole philosophy here.

One of the things I've heard during this whole process which I've been particularly upset by is the energy marketers that are now going out and signing contracts with people. We have in the act said along the line that the MEUs and Ontario Hydro could not do that, that they would be null and void as a result of this bill coming into effect. I'm thinking right now that we should make an amendment that might allow us to take the energy marketers in there too so that any contract they sign now will be null and void until such date as the Ontario Energy Board allows the market to proceed, or something like that. Have you got a comment on that?

Mr Laughren: As a matter of fact, if somebody had asked me if I thought there should be any amendments to the bill, that's one I would have said. I would have said yes, that because of the potential problems with marketers there needs to be something in place. Right now we have no jurisdiction and they've got signed contracts, some of them. They assure me they are not doing it any more, but I suspect there are some already out there.

One way of resolving it would be an amendment that says — and Mr McCann is much more expert than I am on this — that when this bill comes into place, any existing contracts, such as you're referring to, would have to abide by the new rules that we establish on licensing of marketers. Do you follow me? If they are consistent with the new rules of the licences, then fine; those contracts can be deemed to be appropriate, and there is nothing wrong with them. But if not, then they are null and void and they must apply for a new licence — something like that.

Do you want to add anything to that?

Mr McCann: I think there are a number of options that could be pursued to achieve that. That's one of them, and certainly we would be discussing and have been discussing these types of amendments with the ministry. I think it is important to recognize that particularly in the electricity sector, public awareness of what they may be purchasing in these contracts is not very great at the moment, so there is a case to be made for some fairly strong consumer protection measure of that nature to be included in the bill.

Mrs Johns: Could you send over something, Floyd, you would feel comfortable with?

The Chair: We have to break off —

Mrs Johns: I'm just wondering if they could write something that they feel comfortable with and give it to the committee so we could have a look at it.

1100

The Chair: That's a good suggestion. I think all the committee members would appreciate that.

Mr Laughren: OK.

The Chair: Thank you for taking the time to come before us. This is a very important part of this restructuring initiative. You're missed in the Legislature, Mr Laughren, but I know that you're once again part of public service to the people of Ontario, and we wish you well in this new endeavour.

Mr Laughren: Thank you, Madam Chair. If I could just say one closing word: Because of all these changes, if members do have any questions or advice, do not hesitate to give us a call, because that helps us too. Thank you very much. Good seeing you all.

The Chair: Thanks again.

Mr Conway: You're looking dangerously well.

ASSOCIATION OF MAJOR POWER CONSUMERS IN ONTARIO

The Chair: Calling now representatives of the Association of Major Power Consumers in Ontario. Good morning, gentlemen, and welcome to our committee. As I'm sure you know, you have 30 minutes' presentation time, and committee members always like it when they have time for questions.

Mr Lauri Gregg: Thank you, Madam Chair. My name is Lauri Gregg. I'm the chairman of AMPCO and also the energy manager of Falconbridge Ltd. With me today I have two colleagues: Arthur Dickinson, who is the president of AMPCO, and Mark Rodger, who is our legal counsel.

Thank you for the opportunity to present AMPCO's views regarding the Energy Competition Act, 1998. I will not go into the detail of our submission at this time but will quickly summarize it so that we can move on to questions.

Let me first describe AMPCO. The Association of Major Power Consumers in Ontario represents the interests of industrial companies that depend on electricity as a key source of energy for manufacturing or processing. AMPCO advocates, and has for some time, competitive electricity rates, and promotes the concept of a reliable, environmentally sound supply of electricity. We have 65 members who spend in excess of \$1 billion a year on electricity in this province, which represents about 16% of Ontario Hydro's domestic sales. Falconbridge, my employer, expends more than \$100 million a year on electricity. We're Ontario Hydro's largest direct customer. I'm quite willing during the question period to put on the Falconbridge hat and respond to questions if the committee so wishes.

Because electricity is our major source of energy, AMPCO members have a vested interest in ensuring that the restructuring process leads to a competitive marketplace for electricity. The purpose of the new legislation is to establish a competitive electricity market which will bring economic benefits to Ontario by reducing rates and stimulating new investment and jobs. Certainly we, as large industrial users, have advocated this restructuring for some time to allow us to compete more effectively in the global economy in which we operate. For this reason,

AMPCO strongly endorses the government's decision to restructure the Ontario electricity sector and strongly endorses this legislation as a major step in the evolution of the sector.

While Bill 35 takes the first important steps towards the creation of a competitive electricity market, it raises some concerns in the minds of AMPCO members which we have addressed in our recommendations in our submission and we'll discuss here today.

The focus of this legislation is to improve the electricity sector for Ontario consumers by creating a real market, but it fails to deal adequately with our first area of concern, which is the problem of Genco's market power. The bill hobbles the market and limits customer choice by creating a single Genco which can act as a major barrier to new market entrants.

As we mention in our submission, at a conference convened by the MDC in May, a group of international experts involved in restructuring in the UK, Australia, New Zealand, Argentina and Norway all confirmed that the preferred solution to mitigating market power is to break up Genco into competing entities. Other approaches, such as using a regulating agency, as proposed in this legislation, were referred to as second-best solutions.

Additionally, the recent decision by Ontario Hydro to delay the resumption of discussions with potential private sector partners such as CanaGen sends a signal to potential new investors in generation in the province that new market entrants are less important than recreating a large Genco.

It is in the interest of the people of Ontario to encourage investment in the electricity sector. Such partnerships as the one with CanaGen could go a long way to diminish the market power that Genco will clearly have. They would also protect the interest of electricity consumers, who would benefit from an influx of capital to help offset Ontario Hydro's debt and some proven management expertise which the nuclear division appears to need.

For this reason, AMPCO has included as its first recommendation the need for the government to conduct a review of its policy on divestiture of Genco assets over the next three years.

AMPCO has also recommended that Genco and Servco should not be given the tax advantage that the bill allows over private sector participants who might wish to purchase municipal utility assets. Genco and Servco already have excessive market power and they should not be given additional incentive to expand further.

Our next area of recommendation states that stakeholders should have the choice to pursue non-IMO-administered markets; that is, supply and service transactions falling outside the scope of the proposed act and IMO markets. This will allow AMPCO members and others the opportunity to explore the complete range of financial and physical options available to them and to be innovative in terms of electricity supply and transmission.

Moving on to the area of telecommunications property interests, we have made a recommendation to improve the clarity and understanding of the act. As presently worded,

there is some ambiguity related to the definitions of "ease-ment" and "telecommunications service" which need to be resolved.

Turning now to IMO operations, AMPCO has recommended that in preparation for the new marketplace it will be important for the operation of the IMO to be benchmarked against the best practices of other established IMOs by the OEB. This benchmarking will enable the board to ensure that the IMO operates as efficiently as possible.

AMPCO has also made five recommendations regarding licensing procedures. In particular, we recommend that the OEB should be directed to the issue of a wholesale market participant licence which would consolidate the possible requirement to obtain multiple licences by large users. We have done this with the intent of streamlining the licensing process for the OEB. Using this approach, the process will be easier to manage, because wholesale market participants will indeed have multiple roles. At the very least, we will be both buyers and sellers of electricity. The intent of the recommendation is to diminish the administrative burden caused by the proposed act, which is in line with the recommendation of the Red Tape Commission.

The next area of recommendation relates to regulatory exemptions from licensing, non-discriminatory access to transmission, and the competition transition charge on generation where these assets have existed solely for the members' own use. Again, AMPCO has attempted to simplify the licensing requirements where industrial, municipal or institutional generation was in operation prior to the commencement of Bill 35 or where transmission systems have been used primarily to supply the owners' or group of consumers' own consumption.

While AMPCO recognizes that the recommendation regarding exemption from the competition transition charge for loads supplied by stakeholders for their own consumption may be controversial, it has been included because there is a principle of equity and fairness which should be applied to those who have invested in such facilities in the past. We have outlined several benefits which apply in these circumstances in our submission.

Reform of the Ontario Energy Board is also a key element in the structuring of an efficient marketplace. The new responsibilities of the board will have a substantial impact on the operation of the competitive electricity and gas markets. Since this will involve breaking new ground, it is important that stakeholders have an opportunity to be involved in the redesign of the OEB processes and guidelines. Included in our recommendation is a range of issues where we believe stakeholders can provide valuable input.

1110

Last but not least is the question of managing any residual stranded debt. In our submission we have highlighted certain principles and guidelines which should be incorporated into any residual stranded debt recovery mechanism. However, while the proposed legislation goes some way in dealing with this problem, it has excluded any reference to dividend and other payments by Genco

and Servco to the holder of their equity, the province of Ontario. We believe this is an oversight which can be easily remedied by incorporating the amendment included in our last recommendation, which indicates that any potential dividend or equity payments will be included in the stream of payments retiring the residual stranded debt.

Thank you for your attention. Madam Chair, we're open for questions.

The Chair: Thank you very much. We have five minutes for questions from each caucus and we'll begin with the NDP caucus.

Mr Lessard: I'd just like to ask that you expand upon the final remark you made about the dividends and other payments with respect to going towards the residual stranded debt. I'm not sure I understand that completely.

Mr Gregg: It's not specified in the act that these payments, potential payments, dividend payments or capital payments or retained earning payments, would go towards the stranded debt. Our position is that all cash flow net operating costs should go to retire the debt.

Mr Galt: Thank you for the very detailed presentation and package that you've brought before us.

I understand that many members of your organization serve on the Market Design Committee. Is that true? Are you aware of your membership on that particular committee?

Mr Gregg: We have two participants on the Market Design committee.

Mr Galt: Only two. How large is the Market Design Committee?

Mr Gregg: Sixteen people.

Mr Galt: We've been told by other groups that it's because of the influence of your representatives that there's been no recommendation coming forward that there should be a system benefits charge. Do you believe that's true?

Mr Gregg: I'll ask Arthur to comment on that.

Mr Arthur Dickinson: I'm not sure it is true. I wasn't privy to the discussions at that time so I can't answer that. It sounds like we have enormous influence, if that's the case. But my experience of the discussions at the MDC, and there have been occasions when they will allow observers in, is that it's a very effective and useful process to get agreement across a large group of stakeholders, so I'd be surprised if we had undue influence.

Mr Galt: Do you have any idea or any feelings why the Market Design Committee didn't come forward with a system benefits charge for energy efficiency or environmental protection?

Mr Gregg: I can't comment on that. I have no idea.

Mr Galt: Moving on to some other areas, do you see this competition in the marketplace for electricity as helping the economy of Ontario?

Mr Gregg: We certainly do. With the establishment of an effective competitive electricity marketplace, we will certainly be able to develop rates which potentially will be lower and this will stimulate investment in the economy and certainly help companies such as Falconbridge invest in their existing operations in the province.

Mr Galt: Do you see improvement in job creation and that kind of thing as a result of this lower energy attracting more industry in? Do you see any indication of that happening so far?

Mr Gregg: So far, no, simply because we have not established a competitive market yet. This competitive market for electricity is critical, recognizing that electricity rates have risen 30% to 40% during this decade.

I was looking at a document that we have just the other day that shows that in 1989 we were paying 3.9 cents for electricity; today we're paying 5.4 cents. For us that means \$40 million a year. Were we paying 1990 rates, we would have \$40 million more to invest in what we need to invest in our operations here in Ontario.

Mr Galt: If I can just circle back for a moment to the first question, would your organization be opposed to this system benefits charge, such as 1%, to put into a fund that would look after energy efficiency that would help with environmental protection?

Mr Dickinson: We have a problem with any additional charge on electricity. Industries suffer from having uncompetitive rates here in Ontario so we naturally are not supportive of extra charges. One per cent doesn't sound like very much, but 1% on electricity charges to an industrial customer, to my members, is \$10 million a year extra. There has to be a better way to do it than to impose a charge.

Members of AMPCO have driven for energy efficiency for a long time because of the existing electricity rates. Some of the best energy efficiency measures have been undertaken by AMPCO members, so I'm not sure that will necessarily lead to anything better, but it will lead to a problem with rates if it's applied.

Mr Baird: Just as a comment rather than a question, I want to echo your comment that consumers shouldn't have to bear any additional charge to what they're paying now. That's why they're paying 40 cents or 44 cents on the dollar to service that Ontario Hydro debt, including principal. Then afterwards, through interest and principal dividends, retained earnings and payments in lieu and other payments, they'll continue to have to pay off that debt. Someone has to pay off the debt that's been amassed over the years and that's certainly something that is very important. I just wanted to echo that I share the concern that there shouldn't be any additional charges, that the customers should just have to pay the existing charges to service and retire the pre-existing debt.

Mr Conway: I'm always appreciative of my colleague from Nepean. He holds that chart up and he's right to do so. There is a substantial burden of debt. I always like to point out, though, that in the last 18 months, under the new scheme of things, our friends at the Ontario Hydro board, ably led by Bill Farlinger, have parked \$8.2 billion or \$8.3 billion worth of writedowns. I don't believe that the bulk of that multi-billion-dollar writedown is yet reflected in rates. If it's fully reflected in those Nepean rates, then that's news to me.

But we have this spectacle —I don't want rate increases any more than you do, but we've had a

government that's said, "There shall be no rate increases in a five-year period from 1995 to 2000," and three cheers for that. So what have we got? We've got Mr Farlinger and the board sitting there saying, "Because of this political decision, we will use our rate-setting powers to set aside those costs which we cannot therefore recover in rates." What has that meant? It has meant \$8.3 billion worth of set-aside. If I'm wrong, I want to have somebody tell me how that \$8.5 billion worth of writedown is reflected in my rate today.

Mr Johns: That's the NAOP costs and some of those costs are for purchasing power —

Mr Conway: That's right. I agree, some of those costs, but who couldn't freeze rates, who couldn't be competitive if you could simply say, "These costs I can't recover so I'll park them"?

1120

That gets me to the question I want to talk to you about and that is the whole question of divestiture. I have supported the policy because I believed it to be a policy that was going to genuinely move towards competition, and particularly in generation where 70% of the input costs are to be found in the electricity business, in the main. If you're not going to make competition work on generation, you're not going to get the lion's share of whatever benefits are to be had in the whole exercise.

The government, for reasons that I'm beginning to understand, has decided there can be no meaningful breakup of Ontario Hydro's generation. I believe they're going that because they've got a very serious problem with Ontario Hydro Nuclear. They're not admitting it, but we've got a situation —

Mr Baird: We have admitted it.

Mr Conway: Well, the point I'm making is that fundamental to the competitive policy we all endorse is a breakup of Genco. We're not going to get that. Without that the consumers, large and small, but particularly small, cannot reasonably expect to get meaningful gains on their rates. You've said so and I think you're right. You've not only said so, everybody who has looked at this has said so.

How does this committee deal with a transparent contradiction? The government says it wants competition, and that's widely endorsed. But the single biggest driver in the competitive marketplace for competition is the unbundling of Ontario Hydro's massive generating capacity, and that's not going to happen. What would you say to your neighbour in Oakville or in Etobicoke or in Ottawa who as a residential customer is expecting to get benefits but is not going to get an unbundling, a further breakup of Ontario Hydro generation? You wouldn't have to be Albert Einstein to figure out that there's something wrong with that picture. So what would you say to a person who asked you, as a knowledgeable business person, "How am I going to get benefits on my residential and farm electricity rate over the next few months, over the next few years, if you don't deal with the 70% of input cost, namely generation?"

Mr Gregg: I think it's important to realize, with the creation or the reformation of the electricity sector, that

this is a journey. We're at the first part of the journey and that's why we've recommended that the possibility or the mitigating measure of divesting Genco not be overlooked and be considered in the future. We're at the early stage and right now we're beginning the transition into a competitive marketplace.

Mr Conway: But your brief makes a very powerful argument and, again, there's a growing part of me that thinks that these people at Ontario Hydro are going to make the great train robbers look like pikers. In an exercise that was supposed to be about breakup and about competition, what have we got, according to your own brief? We're going to have a very powerful consolidated Genco, the successor to Ontario Hydro generation. It's going to be strong and powerful without a lot of encumbering debt and we're going to have an even stronger Ontario Hydro retail company. You've pointed out in your brief that it's strengthened in a number of very specific ways that are unfair and do not speak to a level playing field.

So we've had a journey that was to start out with the objective of getting competition and breakup, particularly of the gargantuan monopoly that was Ontario Hydro, and what I'm beginning to see, thanks to evidence like the evidence you've tendered today, is a situation where for at least the next few years we're going to have a big, strong Ontario Hydro generation capacity and a big, strong Ontario Hydro retail company with a lot of debt dumped on the back of a lot of unsuspecting customers. My question is —

Interjection.

Mr Conway: Well, unsuspecting in that there's four or five or six —

Mrs Johns: You're paying for it now.

Mr Conway: Well, yes, you're paying for it now, but you're going to be paying for it in a very different and unfair way, potentially. Why would the customer be anything but skeptical and cynical in the light of what has brought us to this point, particularly when it deals with Ontario Hydro? So has Hydro not pulled off a major coup here? The very things that were supposed to put constraints around them, that were supposed to put competitive pressures both on Genco and the services company appear in first instance not to be there.

Mr Gregg: I think we can take heart in the fact that we recognize this.

Mr Conway: I take heart, yes, and what should we do about it?

Mr Gregg: There's more and more evidence every day that the only way we can mitigate market power is to divest the generation companies in the future. The only way you can create a competitive electricity price is to have actual competition.

Mr Conway: But look at the services company. Arthur, look at services. They're strengthened in a way that we couldn't have imagined five years ago. We're going to get rationalization at the distribution end, but in the name of Ontario Hydro. Was that ever intended in any of your deliberations? The answer is no.

The Chair: Gentlemen, on that note, we thank you very much for coming before the committee. If memory serves me correctly, you were one of the first groups that came to see me when I was the minister to alert us that it was time for change. I'm glad to see you're still at it. Thanks for coming.

1130

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: Now calling representatives from the Association of Municipalities of Ontario. Good morning. Welcome to the committee. As I'm sure you know, you have 30 minutes of presentation time. Please begin by introducing yourselves for the Hansard record.

Mr Michael Power: Madam Chair and members of the standing committee, I'd like to thank you on behalf of the Association of Municipalities of Ontario for the opportunity to appear before you today to present issues on restructuring Ontario's electricity industry, issues that are critical to municipal government.

My name is Michael Power. I am the president of the Association of Municipalities of Ontario and mayor of the town of Geraldton in the great northwest. With me today are Joan King, vice-president of the Association of Municipalities of Ontario, a councillor from the great city of Toronto and the acting chair of the AMO task force on electricity restructuring; as well, Paul Hughes, solicitor, region of Ottawa-Carleton, and a member of AMO's task force on electricity restructuring. As you can see, Sean, we are all-inclusive within AMO.

Mr Conway: Haven't heard about Greenstone yet.

Mr Power: AMO's presentation today will examine the implications and the concerns that municipal governments have with the proposed changes to electricity generation and sale.

The province has outlined an ambitious blueprint for restructuring the electricity industry. The government's main objective, to "support investment and jobs through the lowest possible electricity prices and the best possible electricity service" is one that, if executed properly, will benefit Ontario and its municipalities and those who live and work in our communities. AMO recognizes that change in and for the electric industry is inevitable and it is necessary if Ontario is to compete in the next century.

It is important to emphasize that our comments today are intended to ensure that municipalities are at the forefront of any and all decisions made regarding the restructuring of Ontario's electricity industry. After all, more than \$5 billion in municipal assets are involved, and, like municipal utility agencies, we are concerned about the interests of those living and working in our communities.

In all our presentations to the government on legislative and regulatory change, AMO has consistently maintained that municipal governments must be given the tools and the accompanying flexibility to make local decisions regarding governance structures and service delivery. This

flexibility is crucial and central to the successful transfer of any role or service responsibility and in the restructuring of essential services such as electricity supply and distribution.

One of AMO's key principles in examining this legislation was that the best interests of consumers must guide any reform of Ontario's electricity system. Structural changes to the electricity sector should result in low-cost energy for consumers. It should not jeopardize the availability of electricity to the customer, nor should it negatively impact the environment, public health or the economic strength of municipalities.

The province has confirmed what municipal governments have consistently maintained: that the municipality owns the assets of local electric utilities. As the owners of electricity distribution assets in the magnitude of \$5 billion, municipalities play a critical role as the guardians of public endowment and are greatly concerned about their potential role in retiring Ontario Hydro's stranded debt.

AMO is pleased to join Minister Wilson's transition committee and we welcome the opportunity to participate in these discussions. We remain firm in our commitment to have meaningful input into all areas of this restructuring exercise, at every step in its development.

As primary stakeholders in electricity restructuring and as the owners of the assets of municipal electric utilities, municipal governments share the province's desire to emerge from this exercise with a more competitive, efficient electricity system in Ontario. However, while we may share this goal, municipalities also have some concerns with the way the legislation is currently drafted.

AMO's task force on electricity restructuring has reviewed the bill and, through input from AMO members, has identified some areas of key concern as well as some recommendations we feel will improve this legislation.

Earlier this year, the government established the 12-member Market Design Committee to provide a formal mechanism for the electricity industry and customer representatives to collectively advise on the rules and structures for the new electricity market, including the terms of access for generators located outside Ontario. The committee is also charged with advising the government on the governance and operation of the proposed Independent Market Operator. The establishment of the Independent Market Operator and the Market Design Committee and the new Ontario Energy Board are important to ensure that fair rules of competition and consumer protection are established. AMO supports the renewed mandate of the Ontario Energy Board and the establishment of the Independent Market Operator as the government agencies with the responsibility to regulate the new marketplace.

Decisions respecting local services' structure and governance are most appropriately made by locally elected municipal councils who are ultimately accountable to their property taxpayers. We believe, however, that the province should retain its central control of setting policies and standards of delivery, regardless of who delivers the service, and retain control over the transmission grid.

We are encouraged that the province has appointed a municipal representative to join the Minister's Electricity Transition Committee in its early stages. Given the multiple roles of municipal corporations as large consumers of electricity, agents of delivery and, in some cases, soon-to-be producers of electricity, this inclusiveness must be extended to the Market Design Committee and any other ministerial advisory forum as well.

While some municipalities continue to look to municipal electric utilities to deliver only hydro services, others have moved to or are exploring amalgamating their electricity and water services. This has made the delivery of both these services more efficient, saving dollars for property taxpayers.

There are significant potential cost savings to be gained through economies of scale for municipal electrical utilities in both distribution and retail. This includes the joint provision of service with other municipalities' municipal electric utilities or by combining electricity-related services with other municipal services. Examples of economies of scale include joint fleet management and maintenance, equipment and supply purchasing, meter reading, invoicing and collection. However, section 72 of the Ontario Energy Board Act places limits on the business activities of municipal electric utilities, which are majority-owned by municipalities.

We put it to you, members of the committee, that the bill needs to be amended so that such efficiencies, which are utilized by private corporations in all aspects of business, can be authorized for municipal electrical utilities. Such cost-sharing benefits get passed on to the electricity consumer and to the property taxpayer.

Similarly, municipalities should be given the flexibility to determine how services are delivered in their jurisdictions, that is, to be able to determine if they wish to franchise distribution to municipal electric utilities, amalgamate the service or parts of the service with another municipal department, or provide a franchise to an alternative service delivery provider.

In addition, municipalities without current hydro-electrical systems must not be prevented from establishing new hydro service corporations. While the legislation currently prevents this, we understand that this oversight will be corrected, and we are looking forward to this amendment.

On the issue of introducing competition in supply of power, AMO believes municipalities should have the authority to capitalize on their own power producing potentials and be enabled to generate electricity through cogeneration and other means, including energy from waste. Moreover, municipalities should be able to use these sources of energy for their own corporate uses or to sell on the open market. This would be an innovative method of cutting costs and providing appropriate new revenue sources for municipalities. Obviously, the decision to undertake such ventures will be made by locally elected municipal councils based on local needs and local circumstances.

AMO believes that the legislation should not provide barriers or limits on service restructuring. Any restructuring needs to be a locally driven process. Locally driven restructuring processes will look to the interests of efficiency and customer service.

AMO is concerned about the potential of greater pollution resulting from the increased use of less expensive, fossil-fuel-based energy produced in the United States. As such, AMO supports the bill's intent to empower the Ontario Energy Board to ensure environmental standards compliance through licensing, emissions trading, emissions caps, emissions performance standards and pollution disclosure requirements.

AMO is concerned that the government's priorities of retiring the massive stranded debt of Ontario Hydro will to some extent be accomplished at the expense of municipalities, especially those with large generation facilities. AMO is concerned that the provisions set out in the legislation violate the principle that municipal property taxes are to be raised for municipalities and applied for municipal purposes. They also violate the concept that Hydro's debt should be paid by hydro charges so that those who have benefited from hydro services pay the debt related to providing those services.

As the committee has already heard, the private sector is planning on building new electrical generating facilities and they will be required to pay full property taxes. We seriously question why Genco is to be treated differently.

AMO recommends that a one-time opportunity be provided to municipalities to sell their interest in a municipal electrical utility without incurring a transfer tax based on the fair market value of the utility being transferred. This would allow a municipality to transfer an existing utility to a new operator without having to factor in the amount of the transfer tax in the sale price. Otherwise, this may result in higher electricity costs to municipal consumers, as this extra cost is reflected in the higher consumer rates charged by the new operator.

Municipal electric utilities and Servco have been established as default suppliers of electricity. While this may provide an initial advantage to the supplier in securing and retaining customers, it is likely that other potential advantages, such as tax exemptions, exclusive access to customer consumption information etc., will be eliminated or restricted, thereby creating a significant disadvantage for municipal electric utilities in trying to compete with private suppliers not subject to the same restrictions.

1140

Both of these suppliers must serve customers who are the least attractive to private suppliers. These customers are not necessarily just rural and remote customers, but they may also include customers who have high electricity consumption during peak demand periods. It would appear that it is not possible for municipal electric utilities to favour the most attractive customers through the use of special rates.

The Market Design Committee's report number 2 suggests that municipal electric utilities and Servco may only purchase electricity on the spot market and should not

enjoy the benefits of portfolio purchasing through future price contracts as a means of hedging against electricity price variations. This places them at a disadvantage in terms of retaining customers in the event of a sudden substantial increase in electricity prices on the spot market. The Market Design Committee also suggests smoothed rates, limiting the ability to provide seasonal discounts.

Further, pressures exist for municipal electric utilities to provide electricity rebates to the most expensive customers in order to retain business operations within a particular locality. Private retailers, on the other hand, can selectively choose to provide service to the best customers while not having to compensate municipal electric utilities for having to service the least attractive customers. This places municipal electric utilities at substantial competitive disadvantage and results in increased costs.

AMO recommends that utility rate regulations include an amount charged to all customers to compensate municipal electric utilities for their obligation to be the default supplier to the most expensive customers. This would be similar to the Facility Association risk-sharing pool under the Compulsory Automobile Insurance Act, section 7, which funds liability for uninsured drivers from charges levied against all insured drivers.

AMO is encouraged by the province's commitment to continue the rural and remote assistance to customers who may not be able to take advantage of a restructured competitive marketplace. In that regard, AMO expects to continue to be consulted in the development of related regulations. The residents of dense, large urban markets and those closest to sources of power will be able to take advantage of greater choice and cheaper rates, similar to the current shopping choice for long-distance telephone carriers. However, not all Ontario residents may benefit from wide-open competition. Therefore, AMO is very pleased to see the province's commitment to continue providing rate assistance to rural and remote regions of our great province.

Currently, municipal electric utilities can expand operations into areas serviced by Ontario Hydro Retail by purchasing the distribution assets at net book value. This legislation repeals this section and provides no obligation on the part of Servco to sell distribution assets. Servco may then exercise market power by refusing to sell, effectively forcing local utilities to continue on a confined and inefficient basis, and ultimately take over local distribution assets at a reduced share value.

We believe the legislation should include an obligation by Servco to sell distribution assets to municipal electric utilities where it is shown to the Ontario Energy Board that an area of expansion can be served efficiently by the municipal electric utilities at no higher cost to existing municipal electric utilities' consumers. The purchase price is capable of being set by the Ontario Energy Board at least at fair market value, if not at net book value.

Many of the details related to the implementation of Bill 35 will be outlined in future regulations. Given the wide-ranging implications of the impending regulations, AMO, as a key stakeholder in restructuring the electricity

sector, urges the province to get early input from municipalities prior to the drafting or finalization of regulations. AMO is ready to bring municipal expertise to this activity. Furthermore, AMO recommends that the province empower the Market Design Committee to circulate draft regulations and for broad public consultation prior to promulgation. It is of vital importance that the development of subsequent regulations does not undermine the flexibility and latitude of the bill.

Electricity restructuring in Ontario is recognized as offering significant potential benefits to Ontario municipalities by supporting investment and creating jobs in our communities. To this end, AMO believes that the best interests of customers must guide the restructuring process. This translates into a reliable and efficient source of energy provided to all consumers at low cost, without adverse impacts on availability of supply or detrimental environmental effects.

While the need for greater competition is recognized, the government must monitor and evaluate the process, tools and rules for getting there, and be prepared to make adjustments.

Municipalities are seeking the flexibility and the authority to rearrange their electricity utility functions according to the criteria of consumer protection, cost-effectiveness and efficiency. As directly elected and accountable decision-makers, municipal councils must have the authority to determine how to deliver the best possible service at the lowest costs to their residents and property tax payers.

Moreover, the legislation must include a rational method of taxation so that the retirement of Ontario Hydro's stranded debt is not done at the expense of legitimate sources of future municipal revenues.

Electricity restructuring is a complex matter. AMO and the Municipal Electric Association will be working together to ensure that municipal officials are well informed of the transition decisions that will be required of them.

We, members of the committee, are committed to work with the government to ensure a smooth, practical and fair transition to a new era of power supply.

The Chair: Thank you very much. We have slightly over two minutes for questions from each caucus. We begin with the government caucus.

Mr Baird: Thank you very much for your presentation. I think you skipped page 7 when you were reading, so I'll just refer to it. It's with respect to property taxes. We know we have to have a level playing field, otherwise there would only be one team on the field, so Genco and the MEUs would be required to pay property tax. You make two statements, that any increase in the property tax as a result of that should go to municipalities and not to pay off the stranded debt that folks are currently paying for today. How could it be in the best interest of consumers to see an increase in their electrical rates because their mayor and city council is getting a big windfall of new tax revenue to find new ways to spend? How would that be in the best interest of consumers?

Ms Joan King: One of the concerns we have as municipal overseers is that the only source of revenue we have is property tax. When that new generating company comes into my town, they're going to have to pay full property tax, as I understand it. But for the Genco ones, any increase due to changes in assessment or any increases on the property tax through the grants in lieu won't come to the municipalities, but with the new generator it will come to municipalities. We see that as not fair to begin with, but also that property tax or grants in lieu of property tax truly should come to municipalities.

1150

Mr Baird: Sure, but as a consumer, when I get my bill and it has gone up because my municipality is taking additional tax revenue, how is that in the best interest of the consumer to see local governments and municipalities get more tax revenue and then consumers have their electric bill go up a commensurate amount?

The municipalities would still get every single dollar they're currently getting now but just going to a level playing field. The private sector is going to have to pay taxes, so those MEUs are going to pay taxes at a commensurate amount. There would not be the erosion of one single dollar in revenue, it would just be the difference between what they're paying now and a market tax rate.

Ms King: Can I remind you of the Toronto problem, for example? When for 40 years you don't recognize in assessment changes in property values, then you get into these situations 40 years from now where the municipality is stuck with a property owner who hasn't been paying their full share of property tax. At least, they've been paying it, but it hasn't been coming to the municipality. That's the issue for us.

Mr Baird: But it wouldn't change by one dollar. If I'm an MEU paying \$100 in tax and to go to a market tax rate, it would go up to \$200, what we're saying is that \$100, rather than go to the municipality to funnel into new spending, it would go to pay off that stranded debt that customers are currently paying. Otherwise, they're going to have to pay that debt off and they're going to have to increase people's —

Ms King: Yes, so you're paying it from property tax, and that is our issue.

Mr Baird: But they'd have to raise consumers' hydro rates so that the municipalities could get a windfall of new money.

Mr Power: Why wouldn't you treat everybody on the same level playing field? That's what we're saying, Mr Baird. Joan has pointed out very clearly that you must treat everybody equally, so if the new private company is going to come in and is going to pay taxes at fair market value based on the assessment, why wouldn't the existing ones as well?

Mr Baird: But they are.

Mr Power: That's like turning around and saying to a municipality that because you've got a new company in your municipality that has increased the assessment and therefore there's a little bit of new revenue, that should go to pay down the province's debt, which you incurred.

Hydro incurred their debt. They need to pay it down. We're saying keep it as a level playing field.

Ms King: When our property taxes go up 10 years from now, it would be because we have service costs. What you're saying is, yes, but for that particular company, any of those increases for the service the municipality is providing goes to pay off the debt rather than —

Mr Baird: But on page 8 you say that this could "result in a higher electricity cost to municipal consumers" and you highlight that as a concern. I just think it would be wrong to give a new stream of revenue to the municipalities and then, on the very same day, have hydro customers' hydro bills go up to pay that commensurate amount.

The Chair: Mr Conway?

Mr Conway: I fear my bad habits are spreading. For that I accept total responsibility.

Mr Baird: The liability on that basis is considerable.

Mr Conway: I appreciate the presentation. Really, I have just one question for you, Michael. Thinking about the average residential customer up in your part of the world, in places like Geraldton and Nakina and Longlac, what are they expecting, particularly those people in small-town, rural and northern Ontario, from this policy? Do you sense that they're even aware that major change is under way? At one level — and your brief on page 10 makes the point, at least indirectly — their exposure is very high, because in a market-driven world I don't imagine there's going to be a lot of interest in being active in the very vast regions from which you come. What is the general state of understanding and expectation of the people you represent municipally up in the northwest in communities like Geraldton and area?

Mr Power: Probably, Mr Conway, similar to the expectations of the citizens of Renfrew county, that when they flick on the light switch electricity will flow and the light will go on, that when you turn on your heat your home will be heated, you'll have hot water, all those things. That's why we were very clear in saying that we were quite pleased that as part of the statements the government has made they are guaranteeing that rate assistance for remote and rural Ontario will remain in place. That is very crucial. We're always very happy to hear that commitment being underscored at every possible opportunity.

Mr Conway: At the end of his long and distinguished public career, Mr Leo Bernier, well known to you and myself, Mr Power, styled himself as no longer a politician but a statesman. With your answer, you've graduated to the Leo Bernier school of statesmen, and I thank you for the answer.

Mr Lessard: The big incentive, the carrot that's being dangled in front of everybody, is this promise of lower electricity rates. The minister is consistent in his assurances that rates are going to go down, yet many people have come before this committee in the last week and a half to say that they can't really say that at least in the short term there'll be any decreases in rates. We know that the vast majority of consumers in Ontario are served

by municipal electric corporations, over 10 million residential and small business consumers. You've mentioned in your brief some of the challenges you're going to face in trying to deliver lower electricity rates, and you mentioned the increased risk of purchasing power on the spot market as one of those factors. You also mention being a default supplier to the most expensive customers as well. Finally, you raise the possibility of increased efficiencies that may be achieved through expanding your service area. There seem to be some roadblocks that have been set up in that regard. Given all those factors, do you have any expectation that rates for residential consumers in the municipalities you represent are going to go down, either in the short term or in the long term?

Ms King: One of our concerns is that some of the large users might get a very good deal with the private sector somewhere and that the municipal electric utility might be the one that is having to serve the harder-to-serve or the small users, and that is a concern. What we're saying very clearly is that we need those tools. We have to be able to share. A perfect example: Should we be sending out our water meter reader on week 1 and then our hydro meter reader on week 2? That wouldn't make any sense. We should be able to use one meter reader and share that service and share the cost. We want to make sure that those abilities to make it efficient for municipalities and their electric utilities to function — that we have those tools.

We do have some concerns. We want to see it work. We know that those large companies, the big users, are part of our municipality too and that they bring us good value. We want to have the cake and eat it too. That's what we're saying. We want to make sure that this works properly.

Mr Lessard: Without those changes, do you expect to see lower rates for residential consumers? That's my question.

Ms King: If the municipal electric utility can't work competitively, no, you won't see it. We really need to see those changes.

The Chair: On that note, on behalf of the members of the committee we thank you for coming before us with your suggestions and we appreciate your input.

Colleagues, that's our final presentation this morning. We'll reconvene this afternoon at 1 o'clock.

The committee recessed from 1200 to 1300.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair: Good afternoon, colleagues. Our first presenters this afternoon are from the Canadian Federation of Independent Business. Welcome, Judith. I'm sure you know you have 30 minutes for presentation time, and colleagues are very pleased if you leave time for questions.

Ms Judith Andrew: Madam Chairman and members of the committee, I'm Judith Andrew, executive director of provincial policy with the Canadian Federation of

Independent Business. I am very pleased to be afforded this opportunity on behalf of CFIB's 40,000 small and medium-sized business members in Ontario. We appreciate the opportunity to present the perspective of small business on Bill 35, the Energy Competition Act.

We're aware that the committee has received many presentations from organizations directly involved in the industry, and we note that CFIB represents some firms in that category, for example, utility contracting, but the vast majority of our members would have an interest in this legislation as business customers who represent an important customer segment to be considered, along with large business users and residential consumers.

In your kits you will find a document called the Small Business Primer, and in there you will see that the small business sector is the predominant form of business organization in the province. About three quarters of all businesses in Ontario have fewer than five employees. Small firms account for over half of total private sector employment in Ontario. There are over 300,000 firms currently doing business here, as well as in excess of half a million self-employed individuals doing business on their own account. As a major force in economic growth and job creation in the province, the small business sector must be explicitly considered in this key reform of our electricity industry.

Until the early 1990s, CFIB as an organization had the luxury of ignoring Hydro as an issue since "power at cost" had served small business reasonably well and other issues tended to predominate on our agenda. The extreme economic difficulties of the recession during the early part of the decade, exacerbated by the attention-getting electricity rate increases over 1991 through 1993, put Hydro on our radar screen and directly on to CFIB's member surveys.

In mid-1993 our Ontario provincial survey found that the heavy rate increases had had a bottom-line impact on smaller firms, with about a quarter of the nearly 5,000 respondents indicating a major impact on their firms, one half marking moderate impact and the remainder noting minor impact. Indeed, it is clear that some small firms are reasonably heavy users of electricity and can't be discounted in the sense that they are equivalent to individual residential consumers.

Over the years, we've done various benchmarking on satisfaction with Hydro rates, and the most recent one dates from January 1997. Certainly Ontario Hydro's so-called average rate freeze has not garnered the electrical utility industry accolades from the small business sector. I would direct your attention to the colour charts in the side pocket of your kit. This is from CFIB's Our Members' Opinions data, which is a census that we administer in person at the member's place of business, right at their business premise. These January 1997 data found only 20% of respondents rating their electrical utility as good, while 38% marked fair, and 34% didn't equivocate on rating their electrical utility as poor. In fact, Ontario's small firms gave their electrical utility poorer marks than did smaller firms, on average, in the rest of Canada.

Our members also rated value-for-money on their electrical utility in Ontario worse overall — and this is the combined good and fair ratings — than on their gas-oil utility, on their local telephone, on their long-distance telephone. In fact, their utility rated even worse than Canada Post. Clearly, the status quo is not an option.

CFIB's support for introducing a competitive marketplace in electricity draws from our mandate 182 in 1996, in which 69% of respondents voted in favour of the Ontario government ending Ontario Hydro's monopoly control over electricity generation and transmission and introducing competition among power generators. The full question is appended at the back of the brief as appendix B.

This question was based on the June 1996 report of the Macdonald committee, the Advisory Committee on Competition in Ontario's Electricity System, and it did contemplate the separation of Ontario Hydro's nuclear, hydroelectric and fossil fuel facilities into separate commercial businesses. The question preamble also indicated that nuclear and Niagara Falls generating facilities would remain under public ownership while the rest would be sold.

Certainly our members, as independents, have a strong appreciation for the benefits of free enterprise. They understand all too well the problems associated with little or no competition, having experienced those in other spheres such as banking and workplace disability insurance. Smaller players are always more vulnerable where power is concentrated in the hands of the very few. It is not a leap of faith, therefore, for smaller businesses to support the development of a competitive market in electricity.

Small firms in Ontario expect to benefit from a competitive electricity market, with greater choice, lower prices and a safe and reliable power supply. Many of them may also see business opportunities in connection with the \$10-billion consumer electricity market. A competitive market which delivers on these anticipated benefits will boost the economy by encouraging job growth and investment by small business job creators. Bill 35 sets out the framework to allow these benefits to be realized through the separation of generation from transmission and transmission grid access managed by a truly independent market operator, as well as competition at the retail level.

The CFIB has appreciated the many opportunities afforded to us by the government through the Minister of Energy and staff from the Ministry of Energy, as well as the Ministry of Finance, to consult on the key issues associated with the reform. We have also met on this issue with members of the opposition, as well as with key players such as the chairman of the Ontario Energy Board. As always, our survey results are shared widely with policy-makers.

1310

As a member of the steering committee of the Stakeholders' Alliance for Electricity Competition and Customer Choice, we have been working closely with our larger business counterparts, as well as the municipal

electric utilities, to advance the electricity industry restructuring to everyone's benefit. On behalf of small firms, we flag the following issues for your attention:

On market power, CFIB members support the establishment of a truly competitive market. Because Genco, Ontario Hydro's generation successor company, will hold 90% of the generating capacity, potential abuse of its dominant position is a serious concern. With divestiture ruled out in the short term, we understand that the Market Design Committee is working with Ontario Hydro on a number of market power mitigation measures. These, together with the roles of the Independent Electricity Market Operator and the OEB in promoting competition in the best interests of customers, are expected to guard against Ontario Hydro gaming the market.

We also appreciate Minister Wilson's undertaking that this government will not permit Genco to abuse its market position. Our view is that this area must be monitored very closely and corrective action must be taken as needed, depending on the developments. We join with the stakeholders' alliance in believing that the right form or forms of ownership must and will evolve to serve the interests of electricity customers.

On the issue of stranded debt, Ontario Hydro's \$31 billion of debt is a major millstone around ratepayers' necks, with the cost of servicing and retiring that debt absorbing approximately 40% of customers' electricity bills. Estimates of the amount of Hydro's debt and other liabilities that can't be supported by the new successor companies vary between \$10 billion and \$30 billion, with the actual number being very sensitive to changes in the price of electricity. Since it is impossible to predict future electricity prices accurately, we are convinced that a transparent, flexible approach is necessary to deal with any residual stranded debt.

We are currently polling our members on the alternative of having taxpayers pay for the residual stranded debt and the results from this question will be available roughly late September or October. The full question is attached to the brief. Should the competition transition charge allowed under section 79 of the legislation be necessary, it must be applied even-handedly, in a way that does not discriminate against small and medium-sized businesses.

On the unfair competition issue, CFIB supports the level playing field measures contained in sections 83 through 86, which require the Ontario Hydro successor companies to make payments in lieu of the various taxes. Similarly, the section 87 measure instituting an adjusted gross revenue tax on municipal electric utilities is supportable for putting market participants on an equal basis. When the stranded debt is defrayed, CFIB holds that the value of these revenue streams must be channelled into tax reductions for Ontarians.

It is very important that municipal utilities are prevented from subsidizing the competitive services side of the business from the monopoly wires side of the business. This is an area that must be monitored and regulated very closely to ensure there is no intermingling of resources or

other subtle advantages or cross-subsidies given to the municipal competitor.

We have already heard from CFIB members in the utility services field who are extremely nervous about municipal utilities gearing up to compete on an unfair basis. Tough questions are being asked of us about the transfer of municipal utility assets under section 133 and subsequent. CFIB members in this business want assurance that their municipally owned competitors will not, in effect, be gifted with free assets by the municipality.

Also in this area we're presenting a position that's diametrically opposed to what you heard earlier from the Association of Municipalities of Ontario. We also are concerned about the proposed Ontario Energy Board Act section 72, which outlines the scope of activity for municipal distributors. As we understand it, there is very little constraint in this section, as almost anything can be tangentially linked to enhancing the retailing or distribution of electricity or the use of assets more effectively. The issue of unfair competition by government and its agencies is a huge and growing problem as entrepreneurial types within the public sector see opportunities to launch commercial businesses from their taxpayer-subsidized base. CFIB urges the committee to carefully review and address this issue.

In terms of the regulatory regime, based on our own experience with the Ontario Energy Board, CFIB is concerned that this quasi-judicial tribunal is inaccessible to average Ontarians. This issue takes on even greater importance considering that Bill 35 accords the OEB with substantially increased powers and responsibilities which will affect many smaller players and have a substantial impact on consumers. The regime of cost awards at the OEB has resulted in a very time-consuming and costly hearings process around which some representatives have built entire consulting and legal practices. The issue of accessibility of the OEB to Ontarians should be addressed in the context of implementing the competitive market.

I was pleased to hear this morning the chairman of the OEB, Mr Laughren, indicate that they are intending to shift to a more flexible process. We will want to pay close attention to how that is developed.

We would like to leave with the committee today a principle to guide the restructuring: that Bill 35 and its regulations, associated structures, policies and procedures must have a customer focus. While the various players that come before you will wish arrangements to suit themselves, the objective here is to serve the needs of customers, with all consumers, large and small, sharing in the benefits.

In conclusion, we would say that the Ontario government has set out a carefully considered framework for developing a competitive market in electricity, which we trust will proceed on schedule so that its benefits will be enjoyed at the earliest possible date. We do not underestimate the issues and challenges associated with creating a robust, vibrant electricity market, and we appreciate your serious consideration of the small business concerns in this endeavour. We are heartened by the goodwill

shown to date by all participants, and we anticipate that the open policy development process will continue as we move towards the competitive market in 2000. We appreciate this opportunity and would like to answer your questions.

The Chair: Thank you very much. We begin with the Liberal caucus.

Mr Conway: Thank you very much, Ms Andrew, for a very helpful and specific presentation. The point you make at the bottom of page 3 and the top of page 4 about unfair competition is an understandable one. You focus your concerns around the opportunities that will be afforded municipal utilities to potentially cross-subsidize in ways that will be clever and intricate and perhaps hard for the human eye to capture. You have said nothing about the opportunities for Servco. One of the interesting points that a number of presenters have made in the past eight days is the fact that the legislation effectively empowers Servco to do some things that will clearly consolidate its power. Do you have any concerns in that connection?

Ms Andrew: Yes. In fact, I was not explicit here, but on what we're saying about a level playing field and those concerns, ditto for Servco.

Mr Conway: I appreciate that. My second question has to do with the stranded debt issue. You're currently polling your members, you said on page 3, about the possibility of having taxpayers pay for the residual stranded debt. Do you want to just elaborate on that point?

Ms Andrew: You'll see the vote question appended right there at the back of the submission. Essentially, there are arguments for doing that, one of the arguments being that past Ontario governments have of course guaranteed all of Ontario Hydro's debt, perhaps in connection with things that weren't exactly prudent investments. Mistakes were made.

Mr Conway: Big mistakes were made, absolutely.

Ms Andrew: One could argue, perhaps, that government, on behalf of all taxpayers, should perhaps be participating in this. This would be especially an important issue if, for example, there was the threat of hydro prices rising in connection with any kind of competition, a transition charge. That would be a very unfortunate outcome if, after all this, hydro prices were to rise for the small consumer.

Mr Conway: There is some prospect in the minds of some that in the short term prices may not go down for a goodly number of customers. My belief is that for big customers the prices will probably be going down quickly, simply because they'll have opportunities to do things that small business and individual customers will not have. In fact, we know that over the last two, three or four years big business has been able to negotiate with Hydro.

Ms Andrew: Which our members disagreed with. There's another vote there.

1320

Mr Conway: That's right. It was simply because of their power in the marketplace. I understand that. I don't want to be naive. But my concern is that there be equity in terms of disposing of the multi-billion-dollar debt, what-

ever it is. To be fair to the Ministry of Finance, and I always want to be fair to the Ministry of Finance, they have said the CTC, the competition transition charge, is the last resort. I believe them when they say that, because there are some problems with that. But there are four or five or six other instruments in the basket of charges. The ones I would be most concerned about, as a residential customer or as a small business person, would be the ones that I think are going to be relied on, one of which is going to be taking a slice out of the gross revenues of municipal utilities. That's the big one; that's the one that has the big yield. It's being done in part to level the playing field, and I understand that, but after the stranded debt is paid off, that continues, under the terms of this act, to the credit of Her Majesty's provincial treasury.

Have you got any views on the mix of the other charges? Setting aside the competition transition charge, accepting that that is the last resort, there are five other charges that the legislation proposes. Have you any specific advice, thinking about your members, as to how those instruments might be selected and imposed?

Ms Andrew: As I understand it, the plan is to apply those other charges essentially in lieu of taxes, because those entities are not taxable in the normal way for corporate, property and other taxes. The intention is to channel that revenue stream to the financial corporation towards the debt. Is your question about what happens after that happens?

Mr Conway: I just want to make sure that there's equity. You're right in the main about what you say about how they're to apply, except as I read the language — and we had some testimony this morning that I will certainly want to investigate further. For example, there's a special payments category for Servco and Genco that will contemplate dividends, presumably, and other things; we're not exactly sure, because it's to be determined in regulations. I'm a small business person in North York, and I just want to be sure that I am paying my fair share of this multi-billion dollar debt, no less but no more.

Ms Andrew: I agree with you. We would argue that dividends and such should also apply to any debt. Once the debt is dealt with, it should be channelled back into tax reductions for taxpayers.

Mr Lessard: Thank you very much for your presentation. You've mentioned some mistakes made by Ontario Hydro in the past. One of the biggest was Darlington, the nuclear facility. That's a big part of where the stranded debt is going to come from. But in agreeing with you that we need competition in the hydro market, what we don't want to see is that Ontario Hydro just changes their name, the way in which they hold assets, and we tell them, "Go forth into the future, but don't make those same mistakes that you made in the past." We need some mechanisms to ensure that doesn't happen. I'm not so sure that strictly market forces will do that.

I share your interest in ensuring that all consumers benefit from lower rates, if in fact that's what happens, because I think this is an area where residential consumers share the interests of small business people. We're all

going to be exposed to those same market forces and having to negotiate the best deal we can.

This morning we heard from the Association of Major Power Consumers in Ontario. One of the things they suggested was that they be permitted to have choice beyond the IMO-administered markets. Just to translate that for you, that means to opt out of the market and make their own deals for the supply of power. That would mean that somebody else would end up paying the bills and they would get the benefit by being able to negotiate their own contracts. If they were able to do that or come up with some other ingenious means of trying to avoid paying their share of the stranded debt, that means somebody else is going to get stuck with it. You've given us an estimate of the stranded debt of between \$10 billion and \$30 billion. I guess you're being more forthcoming with us than many other people we've asked to guess what the amount of the stranded debt would be. I would like to know whether you have some specific suggestions as to how we ensure that all consumers, residential and small business people, pay their fair share while we ensure that other large consumers aren't going to be able to avoid paying their fair share of the stranded debt.

Ms Andrew: On that issue, and by extension from our member votes which are in the brief, we would argue that there should be strong anti-avoidance rules so that nobody can wiggle out from paying their share. As you know, the smallest, most vulnerable consumer is residential and typically the very small business and it would be inappropriate to saddle those people with stranded debt charges if some other categories were somehow exempt. So we would argue that there should be anti-avoidance rules to make sure that everyone pays appropriately.

Mr Lessard: Have you canvassed your members at all with respect to environmental issues, their concern or their interest in ensuring that environmental issues are addressed as a result of Bill 35?

Ms Andrew: We haven't canvassed our members specifically on Bill 35 environment-related issues, but we know from previous environmental surveys we've done that our members have very much the same concerns as the general public and they are most interested in ensuring that the environment is protected in the course of any endeavours, including the electricity market.

Mr Lessard: Do you feel that we need to put some strong measures for environmental protection in the bill? Do you think we need to strengthen what's in Bill 35 in that regard?

Ms Andrew: I haven't studied those in detail, but I have read that there are strong measures there. I would be happy to consider that and respond later.

Mr Lessard: Thanks.

Mrs Johns: I appreciate your presentation. I just have a couple of quick questions before Mr Baird. On this chart that you gave us with the heading How do you Rate the Following Organization from a Value-for-Money Perspective? — I know you went directly to the members, so when they were answering that question about their electric utility, can you tell us if they were thinking more

about Ontario Hydro or the MEU that they get service from? What did people think of when you asked them "electric utility"?

Ms Andrew: I imagine it was a mix of both, because not that many people understand the previous structure or what's upcoming. I would argue that a lot of the poor rating had to do with the high rates they're paying and especially their recollection of the big increases in the early 1990s. So they would be rating both Hydro and their utility in that answer.

Mrs Johns: I was just wondering, because over the course of the eight days we've heard a lot of talk about how we should be able to get the generation costs down, which we should be able to, of course, because there's 80% of the dollars of your base payments, but this side has argued that there should be lots of savings to be found on the municipal electric utility side too. I'm just wondering if people out there were recognizing those differences.

Ms Andrew: I expect there is and that makes the fear of cross-subsidy and so forth all the more of concern, because unless that's carefully monitored the municipal utility will start to engage in all sorts of businesses and do it with taxpayer-subsidized assets.

Mrs Johns: That's a big issue for us. You believe that if we open the playing field for municipal electric utilities to enter, what will happen is that the municipal taxpayers will end up subsidizing that, or the ratepayers, and you're opposed to that.

Ms Andrew: That's right.

Mr Baird: Thank you very much for your presentation. I have just one comment to make at the outset. Whenever the CFIB comes before the committee I am always convinced you are representing your members because you've always explicitly asked their opinion on the public policy issue of the day before you come to us. So I certainly appreciate the time and effort you've put into your presentation, including discussing with your members.

I wanted to follow up on the comment of Ms Johns's with respect to the local MEUs and their costs. Do you think it's a safe bet to say, first on the Genco side, on generation, that with competition we're likely to see generation costs fall over time?

Ms Andrew: Absolutely, and from what I'm told that's where the bulk of the savings will be. But certainly on the MEU side there must be some. They have those territorial monopolies.

Mr Baird: Yes, that was my next question: Do you get any differentiation on your survey in terms of geography from various centres? I look at the little flyer I got with my own hydro bill in Nepean, where they compare commercial electric bills. Based on 100 kilowatts, 30,000 kilowatts a month, last year in Toronto you'd have paid \$2,789 but in Nepean you'd have paid only \$2,100. That says to me, when you look at the base, that 90 cents on every dollar in Nepean goes to Ontario Hydro generation, so they're spending about 8.9% on the local MEU delivery, whereas in some other parts of the province it could be well over 20%. Do you get more complaints in certain parts of the province, say, here in the city of

Toronto, where costs are so demonstrably higher than they are in other areas?

Ms Andrew: I think there was some variation. To be honest, I didn't look at it again before coming here, but we can actually tabulate our data by MPP code, by postal code, whatever geographical area we need. So if you're vitally interested in that we could do that for you.

Mr Baird: Maybe not by riding but just by geography, because I think we've spent a lot of time looking at efficiencies from generation. But there also seem to be substantial efficiencies in some parts of the province on distribution at the consumer level, and that's obviously the area closest to residential and small business owners, when you see such a huge amount of difference from one local authority to another.

Ms Andrew: When these data were made available, the Municipal Electric Association was very interested, and I'm sure the opportunities for utilities to benchmark against each other and figure out why one is doing way better than the other are there. I think that's a very good exercise because they haven't faced any competition and there really hasn't been any pressure to do the best they can do.

Mr Baird: That's where benchmarking is important.

The Chair: That's our time, sorry.

Thank you very much for coming before us with your advice and for participating. It's much appreciated.

Ms Andrew: Thank you for the opportunity.

1330

INDEPENDENT POWER PRODUCERS' SOCIETY OF ONTARIO

The Chair: I now call upon representatives of the Independent Power Producers' Society of Ontario. Good afternoon. Welcome to the committee.

Mr Al Barnstable: My name is Al Barnstable. I'm president of the Independent Power Producers' Society of Ontario. To my left is Thomas Brett, who is a director of IPPSO and who has retained the firm of Johnston and Buchan to prepare our brief which we submit to this hearing today. We'll try and keep our verbal part down to 10 minutes approximately so there's plenty of time for questions.

As a matter of background, IPPSO has roughly 500 members in Ontario and we represent the private power producers in this province and the related supply and service industries to the private power sector. Our members have approximately 120 projects in Ontario that are in service and these supply roughly 10% of the province's electricity, two thirds of that through wholesale contracts directly with Ontario Hydro.

Our members essentially represent the sector in the province that is prepared to invest and be competitors at the generation level and this is a key part of the restructuring. We firmly believe that because most of the costs of electricity supply are at the generation level, without further investment in this area there won't be substantial

competition in this province and the effect it could have on prices and investment etc may not be realized for many years.

IPPSO in general is very supportive of the provincial government in its efforts to restructure and bring about competition in the electricity sector in Ontario. We are an active participant stakeholder in the overall restructuring process. We have members on both the Market Design Committee and the Electricity Transition Committee. We very much favour the timetable that has been set by the government to start a competition in the year 2000, and in general we are very impressed with the legislation as it has been drafted and is the purview of this committee.

We do, however, have a number of recommendations that we are tabling today, and I wanted to give you a strong sense that our recommendations are directed mainly at ensuring that there is competition at the generation level for the reasons that I outlined. Unless we see fair and workable provisions in the act to ensure that there is real competition in generation, we don't see that there will be the benefits that are being put forward for restructuring the electricity sector at this time.

We are very concerned, as we've heard other people put before this hearing, and I think some of your questions are in the same framework — our concern with the overall restructuring process is that if it doesn't go a bit further than is currently drafted in the legislation, we could very well end up with little more than a financial restructuring of Ontario Hydro. The monopoly may disappear on paper, but in fact it could very well still be there in that there won't be competition because there isn't a fair set of rules in the legislation that governs the competition provisions of the act.

We're making recommendations today in a number of areas, but there are three main areas that we're putting our emphasis on:

(1) The need for further reform in the market at the outset to lessen the power dominance of the successor generation company.

(2) We're recommending that there be further structural reform in terms of setting up at least four successor generation companies as opposed to a single successor generation company for Ontario Hydro. We think this structural reform is necessary, and contractual licensing and rule-making reform will not go far enough to mitigate the market dominance of a single generator.

(3) We're also recommending further powers for the Ontario Energy Board so that it can intervene under its own initiative on matters concerning market power.

We are addressing some issues in the legislation concerning stranded debt. We recognize the need for stranded debt determination and recovery of stranded debt. We have been very active in providing input on this particular issue and we're coming from the basis that we want to see fairness and equity in both the determination and recovery of stranded debt. You'll see in our recommendations that we have concerns that this whole exercise is a little bit too close to the government. It's not quite as open as it should be. We're recommending that before the numbers are set

and cast in stone, perhaps there needs to be an Ontario Energy Board review of the determination and setting of these numbers.

The third area in which we're making recommendations concerns green power and environmental aspects of restructuring. We feel this is an area that is lagging some of the other reforms and needs more attention. This attention can come through further provisions in the legislation but also in the overall restructuring exercise. We feel there is no better opportunity for the province to make initiatives in this area, and if those initiatives are taken, our members will stand behind green power initiatives and are prepared to invest in this sector of the generation business. We have for many years and we are strongly positioned to make significant investment in this area, but we need to see that there are some additional market-based and some other incentives as we're recommending to stimulate this investment.

I'll close my remarks and turn it over to Tom Brett, who can address in a little more detail some of the things we're recommending here today.

Mr Tom Brett: Thank you very much. Mr Barnstable addressed three fundamental points. I want to touch on three other points that you'll find in our brief.

The first is that the act does not at the moment deal explicitly with the existing contracts between Ontario Hydro and the independent generators. We think it should. Those are long-term, legally binding contracts much akin to a Hydro debt. The act should explicitly deal with them. We believe that these contracts should stay with the financial corporation. They should not be transferred to Genco in particular or to any other third party. We think, as Mr Probyn and others have told you, that as a matter of clarification section 25(3) of the act should be amended to make it clear that those contracts aren't inadvertently terminated by the provisions of that section, which talk about termination of pre-existing Hydro contracts with municipalities.

1340

The second point is that we think the act is a good skeleton which provides a framework for change, but much of the meat is left to regulation. This is not unique to this act by any means, but as a result of that it's very important that there be a good public consultative process for those regulations before they're made final, because a lot is done by regulation in this act: everything from transition charge to categories of contracts which will be protected, to the amounts of these special payments which will flow towards reducing the residual stranded debt and the like. We think there needs to be a strong consultative process and we also think that should apply, as Mr Barnstable said, to those key determinations of the debt, the amounts of special payments and the proposed transition charge.

He mentioned the importance of giving the Ontario Energy Board the right on their own account to inquire into market power considerations. The act has some regulatory oversight of market power but it limits the power of the board to do this on its own initiative. It requires that

the board act in response to a directive from the minister or to a report from the independent market operator.

Next, I suppose under the rubric of level playing field, we think that, as set out in the white paper, the transmission company should not be in the business of acquiring any generation. We don't think there's justification for that with or without OEB approval.

Second, we think that the municipal wires business and the municipal competitive business should be separate corporately. We don't think accounting separation is sufficient. Accounting separation makes it difficult for the regulator to see whether cross-subsidy is going on. It's much better, in our view, to have corporate separation between those two things, and I think the white paper did call for corporate separation between the wires company at the municipal level and the competitive businesses of the distributor.

Finally, we have some concerns about the distributors being able to acquire generation. We think the existing generation that they have now should be grandfathered, but as a general rule distributors should not be in the business of owning generation and acquiring generation, at least not in their own service areas.

Thank you. Those are our initial comments.

The Chair: Thank you very much. We have five minutes for questions from each caucus and we begin with the NDP caucus.

Ms Churley: Thank you for your presentation. I want to follow up on page 12 of your brief where you talk about the lack of mention of existing IPP contracts with Ontario Hydro. I'm wondering if you can expand on the implications of that, if you've had dialogue with the government about what happens to your contracts once this bill is passed and the implications for you if those contracts are not renewed through the government. What happens to the power that you're generating now if you don't have some kind of an agreement on that?

Mr Brett: We haven't had extensive discussions with the government at this stage because this process is getting underway. We would anticipate that in any and all events these contracts would be honoured. We think it's appropriate, though, to incorporate this into the legislation. It isn't simply a question of honouring the contracts, it's also a question of who the contract is with. I think under the original scheme it was with Ontario Hydro, which is a crown corporation bearing a government guarantee. We'd like to see, I think as Mr Probyn told you, that same credit be in place.

Mr Barnstable: I think it's important that these contracts be recognized for what they are. Over the last year or so they got a bit of bad press, mainly Ontario Hydro using them as a smokescreen to cover their own inadequacies. These contracts were struck at about the time the Darlington generating station was being brought into service. The basis of comparison of those contracts really should be power from Darlington. By and large, these contracts on average produced power at about half the price at Darlington, so we see they're a good deal for the province. They've done what was intended when Hydro

entered into these contracts with the sanction of the cabinet. If it hadn't been for these contracts, we probably would have had brownouts this summer. I think Mr Osborne said 7% of his power comes as a result of these contracts. It would have been a tough summer without them.

Mr Lessard: I wanted to ask you about renewable energy portfolio standards and the impact that your members may be able to provide to improving environmental quality in Ontario. We've heard this from a number of presenters. I'm hoping that it's having some impact on the government, because I'm concerned that if we don't have some requirement that there are renewable energy portfolio standards, we're not likely to get much increase in renewable energy in Ontario. I just wondered what your views were on that.

Mr Barnstable: That's the basic reason why we have it in our recommendations. This whole environmental area is a bit of a concern to us, because as we watch the market design process and as the act comes together, the environmental initiatives tend to get shuffled off to the Minister of the Environment and we're not sure that they're going to be up to speed and be able to do things in a timely manner.

We're basically recommending, in addition to emission trading, that we have a renewable energy portfolio. It doesn't need to be a large set of numbers; 1% of the electricity demand in the province would probably represent something close to 1,000 megawatts of additional renewable resources in the province. You can do a lot with a little bit of the market. If you do have that portfolio, you also set up another market mechanism: trading credits for green power. The way we're phrasing it is a "renewable portfolio." Retailers would be required to have a certain per cent of renewable energy in their whole portfolio. Those that had more of that could trade surplus to others that had less, so you could get a very fluid market here.

What we're really after is, if there are some initiatives to get this started, that our members will make investments and they'll be within the competitive market, this very small competitive market for renewables. The very best renewable projects will come forward because they'll have to compete with each other. We think it's an excellent time to do that. We realize it's a bit of a set-aside of the market, but the green advantages and the advantages to the environment are worth setting aside a small portion of the market to stimulate that particular sector.

Mr Lessard: I agree, and they'll create jobs as well.

Mrs Johns: I agree with that too, and I think that's why we've set up the regulations in 87, to allow the opportunity for consumers to have choice for the first time in Ontario, and I think that's record-breaking for us.

From the standpoint of market power, I'd just like to talk about the ability for new generators to come in. I'm not sure if I heard you incorrectly, but what I infer from what you've said is that with the bill the way it is now, new market generators wouldn't come into the market.

Right here on my desk today I have a press release from Northland Power, which of course is one of your members, which says that they're entering into a new

cogeneration project. They're saying: "The viability of this project is directly related to the provincial government's initiative to create an open electricity market in Ontario. An open electricity market would permit direct sales from the facility to customers located in Ontario and/or other interconnect markets such as the northern United States."

Yesterday or the day before when I was in Sarnia there was another independent news release out where they were looking at entering into a large contract in Sarnia, and of course we had TransAlta at the beginning of the month talking about that.

I'm deeply concerned that the impression is left that the new generators won't come in with this legislation the way it is, because obviously they are coming into the marketplace, obviously they think it's a good opportunity. With new generation all we can have, of course, is prices going down for the consumers in Ontario, and that's good news. Would you like to comment on that?

1350

Mr Barnstable: The first thing you should know is that Northland Power is a member of IPPSO, and I think that's what you're alluding to. They were also party to the putting together of our presentation, our recommendations today.

I can't speak for individual generators and their business initiatives. Part of business is positioning yourself in the marketplace. I can tell you, though, that if we don't see further reform — I do consulting in the private power business and I have clients who are some of the larger private power companies in North America. They're somewhat shy of this market. They are very concerned about the dominant position that the successor company to Ontario Hydro will have.

It's an obvious thing. There will be some investment. By and large, there will be bilateral contracts. The benefits won't flow down to the small ratepayers. They'll tend to stay up with the larger customers. If you want real reform and you want real competition and you want real prices, advantages in sifting down to the smallest buyer in the marketplace, you've got to have the very best structural type of competition. We don't have it in this act. We think this one simple change will go a tremendous distance to making that structural change and to really opening the doors to fair competition in this province.

Mrs Johns: Let me just say before I move on to my next question that in the TransAlta deal they are going to sell some power into the retail market and that does bring benefits to the consumers. In that particular case there is a retail component to it.

IPPSO has had someone on the Market Design Committee all the way through and has had I think a fair amount of input in the whole discussion, especially around the second paper, where they say basically that there could be mitigating factors put on market dominance to allow the market to work fairly and competitively.

It's my understanding that everybody who was on the Market Design Committee agreed with that. Did you people put a different report out, or do you not agree that

the mitigating control set up by this second report would curtail predatory pricing and market dominance?

Mr Barnstable: We agreed with some of them, particularly the longer-term initiatives. Where we're concerned is that when the market opens, there is going to be a dominant player there, that you can't really mitigate through rules, licensing or contractual measures. The only way to do it is structurally.

The advice that was given to the Market Design Committee by various experts was that you need structural reform here. I can't speak for specific recommendations of the Market Design Committee. We only have one member on there. As you know, it's by —

Mrs Johns: Consensus.

Mr Barnstable: Progressive consensus I guess you could call it.

Our members are telling us that if they are going to become a presence in this competitive marketplace, it's going to be very tough. If you have one generator who dominates the market, no matter how you try to cover it over with contractual measures, you're going to bury the regulator with some of these mitigation measures. The poor regulator isn't going to be able to address this stuff because of all the different needs. It's better to get it structurally and that's what we're recommending.

Mr Brett: As you know, the Market Design Committee themselves expressed some concern about the fact that they were dealing with an incomplete deck, as it were, to begin with because the option of separating the company into several was not really on the table for them. I think they did the best they could in the circumstances and, as our brief says, we support a number of the things they've done. We just don't think it goes far enough.

Mrs Johns: The Market Design Committee is going to speak to us this afternoon and we'll hear what they say with respect to that, so that's fine. Thank you.

Mr Conway: Gentlemen, I will try not to gild the lily here, but this exchange with Mrs Johns is I think a central one. I have read the Market Design Committee report. I don't profess to understand it in a way that you might, but as a generalist I am able to read the direction, and it couldn't be clearer, particularly if you read it in conjunction with the Macdonald report. I'm a layperson and I've read Macdonald and I've read the Market Design Committee, and they both seem absolutely clear on the centre-piece of the reform you must have to deliver the benefits we all want, namely, lower rates for all classes of customers.

The Market Design Committee and the Macdonald committee both agree that there must be structural reform at the generation level, and obviously you agree with that. The bill, by the way, does not do that. Bill 35 and the policy that attaches to it, particularly the white paper — the white paper said there could not be divestiture beyond the Genco that is proposed in this policy. The Genco that we've got under this policy will begin with about an 85% to 90% market power from day one of this new electricity order 12 or 18 months from now. I think that's a real

problem if we want the competitive benefits we all say we want.

You mentioned in your brief that there should be a disaggregation, an unbundling of Genco into at least four smaller units. Would you clarify that, just explain a bit what those four units might look like and particularly how you would deal with the fundamental difficulty I see, which is the massive power problem that is Ontario Hydro Nuclear?

Mr Barnstable: Yes. First of all, let me back you up a little bit here. We're not in any way recommending divestiture. We're simply saying four publicly held generation companies as opposed to one public generation company.

Mr Conway: I think the Market Design Committee actually used the word "divestiture." I understand what you're saying.

Mr Barnstable: As far as how you would divvy up this generation into four companies, we were very conscious when we made this recommendation that part of the driving force behind the whole nuclear recovery exercise is to consolidate and bring commonality to the operations and maintenance in the nuclear plants.

We are of the view that commonality could be applied even if different nuclear plants were inside of different companies. It's the control of the company and the control of the pricing into the market that we're interested in. There could be a common nuclear operator service provider that could look after those kinds of facilities irrespective of what company they're in.

Where it becomes a challenge, and I don't think it's by any means a difficult challenge but it needs further thought, and we've urged the Market Design Committee to stick their nose in there and look at it: The segregation needs to be quite skilfully done at the fossil plant level because those are the plants that are going to be the price-setting plants in the open market. We want to see those plants competing against each other because it's the price-setting plants that will bring the dynamics to the market. We don't believe that the nuclear plants will be the price-setting plants. They won't be far behind it but they'll be coming to the market at a lower-bid price.

Mr Conway: I appreciate that. The other point I want to underscore and just observe, and maybe a quick question: You point out in your brief, and I like the phrase you use, that Bill 35 is, I think you called it, a "legal skeleton," and it is. It is, as the ministry officials would want me to say, an enabling piece of legislation. It is the Delphic oracle. It can mean everything or it can mean nothing. It can mean whatever Her Majesty's government decides it to mean.

I look at the sweeping executive authority contained in the bill. When the bill was first introduced I made a quick list of the powers the cabinet has under regulation. By regulation the cabinet can appoint the board of directors for the IMO, for Genco, for Servco. By regulation the cabinet can prevent the ending of Ontario Hydro's monopoly supply contracts. By regulation the cabinet will determine the objectives of the financial corporation. By regulation the cabinet will decide how, when and how much consum-

ers and generators will pay in the various stranded debt charges. By regulation the cabinet will issue regulations binding policy directives to the energy board on a range of electricity matters. By regulation the Minister of Finance will appoint the board of directors at the Financial Corp, including the chair and vice-chair. By regulation the cabinet will declare any financial corporation bylaw to be void unless approved by the finance minister. By regulation the Minister of Finance will issue binding directives to the financial corporation. By regulation the Minister of Finance will define the size of the stranded debt that Ontario Hydro will leave behind. By regulation the Ontario Minister of Finance will decide when the stranded debt is deemed to have been retired. By regulation the Minister of Finance will determine the amount of payments Genco, Servco and the municipal electric utilities must make to the financial services corporation. That's just my short list. It is sweeping executive power.

I like your recommendation that there should be some oversight of how those regulations are written and applied for, among other reasons, in many of these critical questions. The Ontario government and the Ontario Minister of Finance have clear conflicts of interest, which I'm sure, like Solomon, they will exercise in the public interest, but you might just want to have some independent regulation or independent oversight to ensure that Solomon behaves as he should behave.

1400

Mr Barnstable: That's basically why we're recommending this oversight on the regulations. I can see why it's of more concern to a legislator than it is to a business person, because we're encouraging the government to move quickly and we very much support the progress that's been made to date. We don't have a lot of trouble with the way the legislation has been worded. The fact is, a lot of the meat has to come in regulations. That suits us fine. They're making good progress, but we want to be party to putting together the rest of this act.

Mr Conway: We all want a break in our rates. We all want lower electricity rates.

The Chair: Gentlemen, thank you very much. It's time to wrap up. We thank you for bringing your views before the committee and appreciate your advice.

Mrs Johns: Madam Chair, just a point of clarification on the way they suggested the breakup would happen, where fossil fuel would be divided through — the government, when they thought about that, would have some concerns, of course, because fossil fuel right now is used primarily for peaking hours and if you had corporations in there that were competing against each other that had to run their fossil fuel on a more consistent basis, we would have to be concerned about the pollution aspects of that also.

ONTARIO CLEAN AIR ALLIANCE

The Chair: Calling now representatives from the Ontario Clean Air Alliance. Good afternoon. Welcome to the committee.

Mr Jack Gibbons: Thank you, Madam Chair. I'm Jack Gibbons, and with me is my colleague Sara Bjorkquist. We'd like to thank the committee very much for giving us this opportunity to speak to you this afternoon on behalf of the Ontario Clean Air Alliance.

The Ontario Clean Air Alliance is a 45-member organization and our 45 members represent over three million people in this province. The objective of the Ontario Clean Air Alliance is very simple: We want to ensure that electricity deregulation leads to cleaner air, not increased air pollution.

This afternoon I would like to briefly address you on three topics: (1) why deregulation could lead to increased air pollution; (2) how we can ensure that electricity competition will lead to cleaner air; and (3) the alliance's recommendations.

At present, Ontario Hydro is subject to emissions caps for its emissions of greenhouse gases, sulphur dioxide emissions and nitrogen oxide emissions. This means that there are legally binding limits on the amount of those gases that Ontario Hydro can emit into the atmosphere. However, the status quo emissions quotas or caps on Ontario Hydro will not be sufficient to protect public health and the environment in a deregulated electricity marketplace, for three reasons.

First, Ontario Hydro's emission limits will not apply to its new domestic and US competitors. Therefore, without effective new environmental regulations, electricity emissions will rise when competition begins in the year 2000.

Second, there are no caps on the 35 air-toxic emissions associated with coal-fired electricity generation. These toxic emissions include mercury, which is a very potent nerve toxin, and they also include six known cancer-causing agents, that is, arsenic, beryllium, cadmium, chromium, lead and nickel.

Finally, Ontario Hydro's status quo emission caps are too high. They're too high in terms of protecting public health and the environment. For example, according to the acidifying emissions task group our sulphur dioxide emissions should be reduced by a further 75%. I'd like to note for the committee that that acidifying emissions task group included representatives from Inco, from Shell Canada and from the Canadian Electricity Association. Also, as you know, the Ontario Medical Association has called for a further 85% reduction in Ontario Hydro's nitrogen oxide emissions.

In its white paper, the government of Ontario promised the people of Ontario that when implementing a competitive electricity market it would ensure that our environmental performance is maintained and improved. To improve our environmental performance we must ensure that our electricity-related emissions go down when competition starts in the year 2000. In order to ensure that, it's absolutely essential that the government of Ontario impose legally binding emissions caps which apply to all players in the marketplace, domestic and foreign, which will ensure that all the emissions associated with electricity generation go down when competition starts.

We are very pleased to note that the Market Design Committee, which was appointed by Energy Minister Wilson to give him advice on the creation of a competitive electricity market and the protection of the environment, has recommended that starting in the year 2000 there should be emissions caps on all the emissions associated with electricity generation. So the Market Design Committee has called for emissions caps, the same thing that we're calling for.

Unfortunately, in our opinion, the government has not yet accepted the Market Design Committee's recommendations with respect to environmental protection in two important aspects. First, the government of Ontario has not yet committed to establishing emissions caps which will reduce our total electricity-related emissions when competition commences. Second, the government of Ontario, in their consultations with stakeholders about new environmental regulations, so far have only consulted stakeholders on emissions regulations for two of the 38 air pollutants associated with electricity generation. It appears the government is in the process of developing new environmental regulations for only two pollutants, that is, sulphur dioxide and nitrogen oxide, and therefore it appears that the government is not planning to put in place environmental regulations which will ensure that our greenhouse gas and our air-toxic emissions decline, or are even held constant, when competition begins.

This, in our submission, is a very serious omission. It's inconsistent with the Market Design Committee's recommendations to the government that caps be established for all emissions, not just two but all 38, and it's also inconsistent, in our opinion, with the government's commitment and promise to the people of Ontario that when implementing competition it would protect the environment and ensure that we get an environmental and public health improvement.

Finally, our recommendations: At the moment, under the Environmental Protection Act, the government of Ontario has the ability to cap the emissions of domestic electricity generators. If the Energy Competition Act is approved, the government will also have the authority to cap the emissions associated with electricity imports from the United States, so that is a big step forward. Therefore, the Clean Air Alliance recommends that the provisions of the Energy Competition Act, which would allow the government of Ontario to cap the emissions associated with US electricity imports, be approved.

Second, we recommend that the Ministry of Environment issue a discussion paper analyzing the benefits and costs of various levels of emissions reductions of all the pollutants associated with electricity consumption. Then after the discussion paper is issued, we recommend that the Ministry of Environment consult with the people of Ontario about the appropriate level of emissions reductions for those pollutants.

Finally, we recommend that the government of Ontario establish emissions caps for greenhouse gas emissions, sulphur dioxide, nitrogen oxide and the 35 air-toxics which will ensure that those emissions decline when com-

petition is established. If the government does that, then we can enjoy the economic benefits of competition and customer choice and we can also have a cleaner and healthier environment for our families.

1410

The Chair: Thank you very much. Lots of time for questions, about six minute per caucus, and we begin with the government caucus.

Mr Galt: Thank you for a very detailed and interesting presentation. It's neat to see how many people and organizations you represent. It certainly gives it some credibility. We had an interesting presentation yesterday from the Ontario Medical Association detailing how some of these pollutants do affect, biologically and pathologically, bronchials and lungs.

As you're probably aware, at present it's next to impossible, if not impossible, to get green power on to the grid, other than demonstration projects that Ontario Hydro may wish to operate. At the same time, they are wide open to import whatever kind of power they want, whether it be dirty power from Ohio or wherever. That's our present status, so I think you would have to agree that any move in the direction that we're going with competition is going to be at least environmentally a step in the right direction.

Mr Gibbons: Sir, if I can just stop you there, I certainly understand what you're saying. With a competitive electricity market, green power will now be able to be sold in Ontario, and that, I personally believe, is a very positive development. But that, in and of itself, will not lead to a net reduction in pollution.

While certain people will now have the opportunity to pay a premium price for green power and that's positive — it's customer choice and that will help the environment for environmentally responsible citizens who are willing to do that — at the same time, without new emissions caps, Ontario's companies, Ontario's large municipal electric utilities, will go to the Ohio Valley, they'll buy very cheap but dirty coal-fired electricity, and the net impact will be a rise in emissions.

We're only going to build so many wind turbines on the city of Toronto lakefront. They'll have a positive impact, but they can easily be swamped by the negative impact of increased purchases from the Ohio Valley of coal-fired electricity.

Mr Galt: This particular bill, as it relates to environment, is enabling legislation. In other words, regulations can be written, and we're very open to the suggestions that you've have made here today, certainly very specific on things like caps for SO₂ and NO₂. We're certainly into consultations and look forward to your input and assistance with that.

Having read the bill, do you see anywhere in this bill that there is anything that would stop or interfere with the objectives that you're putting forward?

Mr Gibbons: No, sir. We like the bill. We agree with you, it's enabling legislation, and the key thing is that the government move forward after the bill is approved with the appropriate regulations. This is a positive step forward, but it is essential that it be combined with the proper

environmental regulations. Then, we believe, we can have the benefits of competition and also the benefits of cleaner air. The bill provides the potential for great things to happen in Ontario, but we need the proper regulations.

Mr Galt: With the enabling legislation, it doesn't lock us in down the road. We can keep ratcheting it down to protect the environment as we go, as you're quite aware. There are some advantages in leaving it as enabling, a little bit open so that we can do that with the legislation in the future.

The medical association and yourselves are talking in the neighbourhood of a 75% further reduction of SO₂ and NO₂. Do you have any feeling, if we were to do that with the present Ontario Hydro operation, what that would do to rates?

Mr Gibbons: That's a very good question and I'm glad you asked it. Our members have simply said that emissions should go down when competition starts. We haven't said by how much, whether it's 75% or 1%. The key question is, we know from a health point of view we need very large emission reductions, and that's what the Ontario Medical Association spoke to you about.

There is obviously also the question of economics: How much is it going to cost? We're in the process of sponsoring a technical study which is going to look at the cost of getting various levels of emissions reductions by building new natural gas turbines to replace the output of Ontario Hydro's coal-fired stations. We're hoping that we'll have the results of that study by the middle of October and then we can share it with the government and the people of Ontario, and we'll be able to talk dollars, about how much it would cost in terms of bill impacts for various levels of emissions reductions.

Mr Galt: We certainly look forward to that information. As you're probably aware, the Lennox station, two of those four generators are either now or will be very shortly converted to gas, and we can certainly clean up on some of the other coal-fired plants that are presently going on. So Ontario Hydro — a little bit of support, a little defence — they're coming quite a way. They are also part of the Countdown Acid Rain program. They've reduced their SO₂, the acid rain, considerably; it has been voluntary on NO₂, a grand total on the max of some 215,000 tonnes. So they have come in the right direction. I guess that's the good news. The bad news is there is still a long way to go environmentally.

Mr Gibbons: Absolutely, I agree with you 100%.

Mr Conway: Thank you, the Clean Air Alliance. It's good to have your presentation. A couple of questions present themselves.

Just forgetting for the moment the move to competition, I want to talk a little bit about the nuclear recovery program, because when we were chatting — I think in this very room a year ago, Jack; I think you presented at that time — one of the concerns that I believe you and others had was that in the next couple of years, as we take 4,000-plus megawatts of nuclear power out of production, we have to replace that. Given the transmission constraints and other constraints, it is likely that there will be a

reliance by Ontario Hydro, not on just more domestically produced coal-fired electricity but almost certainly a greater reliance on American, Ohio Valley coal-fired electricity. One just imagines the province of Ontario kind of going coughing, spitting and gagging into the first few years of deregulation and nuclear power recovery. I'm not so sure that we didn't see a little bit of that this summer.

What can you tell us about the nuclear recovery program, from your point of view, a year after we discussed it, particularly in terms of the increased reliance on coal-fired electricity?

Mr Gibbons: Certainly the fact that the nuclear plants are under means increased emissions. It's my best understanding, though, that Ontario Hydro is still planning to comply with all its emissions caps for greenhouse gases and sulphur dioxides and nitrogen oxides. So they are still complying with the caps and it's good those caps are there. Clearly, that's the reason why caps should continue, for all the players.

In the long run, we've got to get off coal, clearly. If we're going to get substantial emission reductions, we have to get off coal. Personally, I believe the cheapest way to achieve significant emission reductions is by substituting natural gas for the coal-fired output.

Mr Conway: You're absolutely right. I think that is a given. The assumption is that a centrepiece of the new generation world is going to be combined-cycle, gas-fired and electric, absolutely. But we've got to get from here to there, and in the short term we've got the nuclear recovery program, which had as its backup the importation of coal-fired electricity from the Ohio Valley. You're not aware that we've had to draw on very much of that in the last few months?

Mr Gibbons: I'm not aware of the numbers.

Mr Conway: The second question, that's related, is, how do we effectively regulate the transboundary issues? I don't know the regulatory environment as well as you, obviously, in the environmental area, but one of the concerns that I have is, can we actually write legislation — emission caps and trading systems — that will be effective in the sense that we make decisions in Ontario but the problem may be in Ohio or Michigan or New York?

Mr Gibbons: Yes, we believe you can. What we're calling for is emissions caps for all of Ontario's electricity, both produced in Ontario and imported and consumed in Ontario. We're saying that anyone who wants to sell in Ontario must come in within that emissions cap. For example, everyone who sells in Ontario would have to have an emissions quota, and therefore people who want to bring in power from the US would have to ensure that the emissions associated with those electricity imports don't exceed their quota, which is part of the overall Ontario quota.

Mr Conway: The Market Design Committee, in its second report, on page 5-4 says, "Emissions monitoring and enforcement are key factors to the success of an emissions trading system." They go on in other places to talk about the importance of monitoring and enforcement.

Do we have in Ontario today the capacity to monitor and enforce to the level required to make these systems actually work?

Mr Gibbons: If we don't exactly have the capacity right now, we can certainly create it with relatively few bodies. For example, the American generators have to provide all kinds of details to American regulators, and that information can be publicly available. The government of Ontario can obtain it. The Independent Market Operator, which will be dispatching power in Ontario, including imports from the United States — they are very sophisticated people. They are well aware of where the power is coming from. They could easily gather the data and find out, when they're importing X kilowatt hours of coal-fired electricity, what the incremental emissions of sulphur dioxide or whatever are. So, yes, we can gather the data. I'm not sure we have civil servants at the moment who are on top of that, but a relatively small staff of sophisticated people could get on top of that issue very easily.

1420

Mr Conway: I appreciate that. A final question, I suppose, would be that the basic policy we have in front of us turns on the notion that it's going to be a market-driven dynamic. The OMA and others, certainly the Market Design Committee — I won't read the language, but there is clearly a difficulty with pure market forces when it comes to the environment, in terms of the selection of sources of generation. How do you properly price the downstream social and health consequences that the OMA was very explicit about last night? Any suggestions beyond what you've said in terms of ensuring that the market disciplines recognize particularly these health issues that have in the past not been very well understood or valued in the marketplace?

Mr Gibbons: We believe that the market alone, without proper environmental regulations, will not protect the environment, but we believe there is a simple solution. It's emissions caps for all the pollutants that harm human health. The government establishes those caps, then you will harness market forces with your competitive market to ensure those emissions reductions are met at the lowest possible cost.

Ms Churley: Thank you very much for your presentation. You have echoed what others have said. I'm hoping the government members hear that, because it seems they want to hang their hat on consumer choice and labelling, consumer information, and limited emissions caps. In the limited hearings I've attended — I've only attended the ones in Toronto — we're hearing over and over again that that doesn't go far enough.

I want to ask you a larger question, and I'll start by saying this. Back in 1957, Leslie Frost started environmental protection in a big way in Ontario when he created the Ontario Water Resources Commission. Since that time, every government — Tory, Liberal and NDP — has moved forward on environmental protection in varying degrees over the years. Since this government came into power we have seen repeatedly a downward trend, that is,

deregulation and cuts, the cutting of people who are out there to enforce and monitor by about a third and incredible cuts to resources over all. This trend has got to stop. You congratulated the government, and I do too, on at least this skeleton of the bill before us. But we know it's the regulations and what happens after this bill is passed that's going to make all the difference.

I don't trust this government and this Ministry of the Environment, given their track record, to bring in the kinds of remedies, the kinds of regulations, the kinds of laws that are needed, despite the lovely title of the bill. It reminds me of the title of many other bills. I want your comments on that. Given the state of the environmental protection we've seen to date, do you trust this government to proceed and bring in the measures we need? Do you have a fear that we're going to end up in a situation where our environment, with the changes in our electricity production, is actually going to be worse?

Mr Gibbons: The government has repeatedly said in their white paper that they want to bring in competition in a way that will protect the environment, and we certainly hope the government will do that. As we've said, this is enabling legislation, and we'll learn whether they will when we see the regulations. Our 45 members sincerely hope the government will do what they promise. If they do what they promise, we can have a very significant benefit for public health and the environment. It's good public policy, it'll be good for the people of Ontario, so I hope the government will do it.

Mr Lessard: What we've heard over and over again from this government is that to reduce emissions and improve the environment, you give that responsibility to consumers. If you give consumers the choice, they'll choose green power and renewable energy, and that will improve the environment. You responded to that question earlier by saying that you don't think that goes far enough, and I agree.

Other suggestions we've heard, in addition to emissions caps, are the renewable portfolio standard and systems benefit charges. I wondered what your opinions were with respect to those.

Mr Gibbons: Our alliance is simply calling for emissions caps, because if you put in strict emissions caps, you can protect the environment. Strictly speaking, that's all you need to do if your goal is to reduce the air emissions. The simple mandate of the Ontario Clean Air Alliance is to reduce air emissions. But if you also bring in a renewable portfolio standard or a systems benefit charge for energy efficiency programs, those are complementary to a cap. They'll help the cap be achieved. Those are complementary options.

The Chair: Thank you very much. That's our time. You stated your case very clearly, and I know the committee members are appreciative of your views.

Mr Galt: Madam Chair, just a little clarification for the committee. This government has done more for the environment in the last three years than the previous two governments did in their 10 years. Ms Churley keeps talking a good story, but that's all their governments did

about the environment, was talk a good story. They did very little to improve the environment.

The Chair: That's not a point of order.

Ms Churley: You're very funny, Doug.

Mr Galt: They talk it but they sure as heck don't walk it.

1430

AMERICAN ELECTRIC POWER RESOURCES CANADA

The Chair: Let me call representatives from American Electric Power Resources Canada. Good afternoon and welcome to the committee. Please make yourselves comfortable. You have 30 minutes for your presentation time. As you begin, please introduce yourselves for the Hansard record.

Mr Tom Drolet: My name is Tom Drolet. I'm the managing director of AEP Resources Canada. With me are Nabila Yousef, who is the general manager of AEP Resources Canada, and Pat Hemlepp, the manager of corporate and public relations from Columbus, Ohio, our head office.

The Chair: Welcome.

Mr Drolet: Well, thanks for having us. I look forward to this opportunity to read into the record some abbreviated version, as best an Irish-French Canadian can stick to the story line, of the paper. I'll also take some liberties as I go through to editorialize, in order to maximize question time.

Today I'm going to touch on four topics: the development of competition, specifically here in Ontario; transmission to and from Ontario; new generation potential in Ontario; and the environment is fourth.

A little bit more on Nabila. She had a 22-year career with Ontario Hydro in the electrical industry, in both the nuke areas, where she got up to be director of Pickering engineering construction, and also on the retail distribution side. Pat Hemlepp has been with AEP for a number of years and before that was a reporter, and is clearly able to speak on a number of issues, including the environment. As for myself, I made my 26-year career with Ontario Hydro my life. I enjoyed that time there, after a military college start in flying. They ended up using me around the system in Hydro, all the way from the nuclear stations to fossil to hydraulic, in R&D programs and so forth. The combination I'm trying to set is that we feel we have some perspective, even though we represent an American utility, on the local environment and all its considerations.

Based on that experience and that of my company, AEP, the Energy Competition Act is not only setting the correct course for Ontario but, more importantly, because of the schedule you have set for yourselves, this legislation vaults you into the lead among many jurisdictions throughout North America in terms of getting on with competition choice and so forth. We compliment you on that very advanced schedule. Perhaps only California and certain

areas of the northeast of the US, both high-cost jurisdictions, are ahead of you on that schedule.

Just a small bit on AEP. They are, by any measure, a large electrical utility, one of the largest in the world. They also own foreign holdings in the UK, a large distribution company called Yorkshire Electricity. They're building a power plant in China right now. They have 20% of a hydraulic company in Australia.

AEP Resources, here in Canada, what are we about? We're here to look for and are considering a variety of power project opportunities right across the land. We serve, by the way, a total of 7 million residents in our core area just south of the Great Lakes and slightly to the West: Indiana, Kentucky, Michigan and so forth. We have 21 major generating stations, 125,000 miles of transmission lines and so on. I won't go into our recent merger announcement with Central Southwest, except to say that Ron Osborne of Ontario Hydro the other day did a great job of giving us three or four paragraphs of his speech, so I'm sure you're well informed about that particular merger.

We're here for the long term, and we're here to support the government in the generic area of the legislation you're bringing in now. We'll persist, not only in Ontario but in Alberta and in other provinces, to look for opportunities, in the true belief that deregulation is fostering that type of behaviour. We want to act that out, not just here in Canada but elsewhere in the world.

Bill 35 is in essence a made-in-Ontario solution for a made-in-Ontario set of conditions. I think you've done a good job of customizing the local circumstance into the local legislation. Not all ideas in what we call deregulation — incorrectly, I would add; I'll go on to say in a moment — fit the bill here in Ontario. Our electricity industry is going through what everybody does call popularly deregulation. What a misnomer. It ain't. It isn't. Not so. In fact, what we're really talking about is a shift from a monopoly geographic environment into a competition-everywhere type of environment. So it sure isn't deregulation versus regulation. It's monopoly versus competition. I hope that gradually we all start to talk and think like that, because certainly we, the participants in the industry, think like that.

Our continued economic success in Ontario depends upon Ontario's access to competitive power prices. Ontario is now part of an integrated NAFTA North America. As such, the economic zone, if I can use that, called Ontario, just like the economic zone called the US Midwest, is fighting economic wars and needs the infrastructure to carry on and develop that. Recently, our governor of Ohio was up here and noted in the last five years alone 60% explosive growth in trade between those two jurisdictions.

The first topic I'd like to address specifically, as it pertains to the bill, is transmission integration. Is Ontario's transmission system adequate to deal with the future competitive environment you are trying to create? With the growth of the economies in central Canada and the US Midwest, we can expect — but we can't measure it yet, of

course — a growth in the demand for electricity, not only in our home service jurisdiction but here in Ontario. This fact demands that we put in place the systems that allow the transfer of power to allow those things to happen.

The Ontario electric power system is relatively isolated — relatively islanded, as some would say — when it come to many connections with surrounding jurisdictions. Just as an example, but only to show you the other end of it, our home service jurisdiction — in Ohio, Virginia, Indiana and so forth — is interconnected with 29 other utility jurisdictions and 120 connections. Here in Ontario we have somewhere between six and eight, depending on whether you have directed or dedicated lines or actual interconnections into the US, Quebec and Manitoba and so forth. One hundred and twenty versus six is a pretty big difference for a jurisdiction.

We know that the development and operation of high-voltage transmission systems is a complex matter requiring careful study and planning. That said, we are encouraging you, the government, as you bring forward this legislation, to look for further scheduled and planned ways of integrating the grid of Ontario with surrounding jurisdictions. I might add, as the Market Design Committee is looking at and has looked at, that internally in Ontario there are lots of choke points, so there's some work required there. That's all in the name of trying to foster competition in your home jurisdiction, which is what you're after in this legislation.

Remember that it's a two-way street too. It's not just self-serving on parties like ourselves to want more access to this market, but it will also allow Ontario Hydro/Genco here to get lines out. As Mr Osborne said, they'd like to be able to compete outside. Well, let's have the pathways, the highways to allow them to do that. We're asking for more attention, if you will, clauses in the legislation which look for those planned and scheduled activities.

Mature competitive market systems are by nature more in balance when it comes to supply and demand than are monopoly systems. Supply failures can be made up from surrounding jurisdictions. Also, causes of nature, be they ice storms, heat waves or collapsed lines, all can be corrected the more interconnected your system is. Again, this is a relatively islanded system up here.

Finally, I'm going to turn my attention to the remaining two quick issues.

Fostering competition in generation in the near term: With Genco providing the vast majority of generation in Ontario, at least initially, and with limited interconnections with surrounding jurisdictions, the government should consider strengthening those areas of Bill 35 which foster new merchant generation and/or industrial-hosted merchant generation.

With the possibility of a competitive transition charge on transmission or generation to take care of the stranded debt of Ontario Hydro, the returns from an investment of pure merchant or industrial-hosted merchant plant is of course likely to be smaller the higher the stranded debt is. You could say that the stranded debt is actually a great big barrier which we competitors have to jump over. The

bigger the debt, the higher the bar. To foster competition and to push the electricity generation sector towards a greater number of players, the government of Ontario should allow, in the legislation, for special projects based on building and serving customers, with the new investment in plant and jobs that folks like ourselves would like to bring to the province, of course with all due compliance for Ontario environmental standards.

The environment: Following the Clean Air Alliance, I know it's on our minds. With a lot of the references to the Ohio Valley, part of which we occupy from our home service jurisdiction, it behoves us to remind us all that we all share the environment. We all have a common environment, and the air is the biggest single carrier of that commonality. The case for a common set of environmental standards, state-wise, federal-wise, the US and Canada, is absolutely overwhelming, and the sooner that commonality, driven by governments, is put in place, we think the sooner the workable framework for the way in which we can work in a competitive integrated environment will be set.

As long as we have the carping between jurisdictions, the nuances of numbers here versus the numbers there, unless the standards are put in place to mitigate that sort of argument — and remember that the whole course of the exercise is to look at public health and its amelioration. Enough said on it.

1440

All generators of electricity in Ontario and the US must meet existing environmental standards. We do, and I know that Ontario Hydro and the IPPSO companies all do here. In the United States, those standards must be met by electricity generators and industries, and they have become more and more stringent over the last 20 years.

Electricity deregulation is a very complex issue, as you have discovered; so is environmental regulation very complex. These issues will require substantial time and effort to formulate meaningful and appropriate regulations.

We want to end just by saying that we're thankful for the opportunity to chat to you, and we're open to anything that's on your mind.

The Chair: Thank you very much. Five minutes for questions from each caucus, beginning with the NDP.

Mr Lessard: Thank you very much. I take it that you are one of those who's ready, willing and able and looking for the opportunity not only to produce power in Ontario but to produce power to be exported into Ontario from the United States, or perhaps even establishing or buying generating facilities here in Ontario. Given that, I'd like to talk to you about environmental standards and ask you about the mix of the types of generation facilities that you have currently in your asset base.

Mr Drolet: I'll ask Pat Hemlepp to help me too, but let me try to get it right, Pat.

We've got today, give or take, 24,000 megawatts, about what Ontario Hydro has available to it today with some of the nukes being shut down. We're, give or take, the same size. Last year we both produced, give or take, 135 terawatt-hours of actual power.

However, with the merger with Central South West, we're getting another 16,000, for a total of about 39,000 or 40,000, somewhere in there. The percentage split today, forgetting Central South West, is about —

Mr Pat Hemlepp: It's 88% coal-fired, approximately 10% nuclear, and the other 2% is a combination of hydraulic and pump-storage hydraulic.

Mr Drolet: On the Central South West side — let's assume for this discussion that it will close in about a year's time, we hope — of that 16,000, they have about 9,000 gas, so we're well into gas with that, and about 6,000 or 7,000, whatever the remainder is, on coal-fired. It's a predominantly fossil-fired generation base we have.

To comment further on your point, yes, we look at it as a two-way street. We're looking for not only importing power from the United States from our existing facilities, whatever they may end up being as time changes, but given the fact that our system is pretty much in balance now, we don't have spare generation. There was a point earlier about whether we imported a lot of power during this latest heat wave. Gad, we were in virtual crisis in our home service jurisdiction about supply, so the answer was no, we didn't import anything into the province at that time. But we're looking for the two-way flow. If we buy generation here, we're looking to serve interconnected markets, wherever they are, south of the border, north of the border, west, east, you name it.

Mr Lessard: I'm from the Windsor area right across the river from Detroit, and our concern is with a lot of transboundary air emissions. If coal-fired power plants are supplying power to Ontario, we're the ones who are going to end up with dirty air.

You were here, I believe, to hear the submission from the Clean Air Alliance earlier, who suggested that there should be emission caps that conform with the caps we have for energy produced in Ontario now and to extend those caps to cover the sources of energy so we have the same caps no matter where the energy is produced. Is that something you think you'd be able to comply with?

Mr Drolet: The point is, of course, we will comply with whatever regulations and standards are put in place. We are, by definition, going to do the right thing, the thing that's demanded of us. That said, it seems to us — and our ideas are still forming in this whole debate — that the concept of having a cap on one geographical jurisdiction like Ontario and then the dichotomy of that with an open free market, but putting all the generators that feed this geographic area under that cap, doesn't seem to compute. The way forward surely should be what I tried to say in the remarks, and that is some commonality of environmental standards wherever the home generating jurisdiction is. The sooner all federal, provincial and state agencies get to that point, the sooner a free market in the trade of electricity can occur without this sort of debate.

If you put in place a cap over Ontario for all generators, wherever the power comes from, be it Duke Energy down in the southeast of the US or wherever it comes from in Michigan or Wisconsin or Manitoba, I'm not sure how all that is going to work. How are you going to audit?

How are you going to mandate the performance of those facilities in those jurisdictions?

Mr Lessard: You raise some interesting concerns. You can understand my concern. We've had friendly relations with the United States for a long time, but we've always had our differences as well. Although I'd like to be optimistic that we can have those uniform caps or environmental standards and we're on our way to making sure that we're doing what we can to improve the environment and not see it deteriorate, there's a lot of negotiation that needs to take place in doing that and there are always bumps in the road.

Mr Hemlepp: One thing AEP has been a strong advocate of is subregional modelling for emissions. It's something that came out at the ozone transport assessment group process that was completed about this time last year. Let's say subregions are having impacts on air quality in different cities; it's taking steps to put the necessary controls on those sources to correct the local problem. That's something that we and other utilities have been pushing for. Now the governors of the states in the Midwest have been pushing for the same thing with the US EPA. The best way to solve local air quality issues is to take care of the local sources of the emission.

What came out of the ozone transport assessment group is that the majority of the impact of nitrogen oxide emissions from coal-fired power plants and other sources takes place within a radius of approximately 60 to 80 miles from that source. It dissipates quickly after that. For instance, emissions from Midwest sources have approximately a four-parts-per-billion impact on air quality in the northeast US. That's out of 140 or 150 parts per billion we're talking about. Our plants, for instance, would likely have more of an impact on the Pittsburgh area than they would on Philadelphia or Newark, New Jersey. That's the reason we've been pushing for the subregional modelling to take care of those local emissions.

Mr Lessard: I'm in Windsor, and I want to know how we're going to influence decisions in Detroit.

Mr Galt: Thank you for an interesting presentation and putting it in a very easy-to-understand way. I'm concerned with your company and your presentation. I have some charts. Usually it's Mr Baird showing charts. This one relates pounds of emission to megawatts of production of the 17 companies that produce electricity in the Midwest and in the northeast. In all three, Ontario comes in in second place. Your company sits somewhere around 13th to 15th. When it comes to NO_x, Ontario Hydro is 0.8 pounds per megawatt; you come in at 15th position, at 7.5 pounds per megawatt. In SO₂, Ontario Hydro comes in at approximately — because I just have a graph here — two pounds per megawatt; you're coming in just slightly under 15 pounds per megawatt. When it comes to CO₂, Ontario Hydro is coming in at approximately 250 pounds per megawatt; you're coming in at slightly under 2,000 pounds per megawatt.

1450

Yes, Ontario wants to open up for competition so we can sell power to the US as well as US competitors here or cogenerators here in Ontario, but our intent is that there will be a cap on these three items for the province of Ontario, for production in Ontario as well as the power coming into Ontario. I'm suggesting to you that you've got a big challenge if you want to sell to anyone in Ontario. How are you going to go about that?

Mr Drolet: For the record, our intent is to build in this jurisdiction and invest dollars in this jurisdiction and create jobs in this jurisdiction and elsewhere in Canada. That said, I'd like to try to get us on to a discussion of apples for apples rather than beef jerky for corncobs.

We have an awful lot of coal-fired generation. Of our 135 terawatt-hours last year, as Pat reminded me, 88% of that is coal-fired. Here in Ontario, about one seventh of the generation, even though the overall is the same, comes from coal; I think it's about one seventh or one sixth, something like that.

Mr Galt: You're in the ballpark.

Mr Drolet: The point I'm making is that we are the largest coal-fired generating utility in North America and, yes, therefore we produce the most SO₂, NO_x and so forth. But on a per-megawatt basis, that is, apples and apples, it's our information that we are similarly in the same ballparks with SO₂ and NO_x as almost all other coal-fired jurisdictions; in fact, we're a little bit better. We're some of the most efficient plants in terms of the burn rate and so forth, the amount of coal required to create a megawatt, of almost any of the coal plants in North America.

Mr Galt: If I can just clarify here, you're talking coal plant compared to coal plant, not total generation.

Mr Drolet: That's right.

Mr Galt: No question. What I was quoting you was total production per company.

Mr Drolet: That's right. In this particular jurisdiction, Ontario Hydro, when it comes to emissions of CO₂, SO_x and NO_x, is in fact fortunate, from that point of view, not to have a lot of coal-fired plants operating at high capacity factors. But let's be fair. They've also got a bunch of nuclear plants, and they have different types of emissions and different types of concerns.

From a public health and therefore an environmental standards point of view, we should try to categorize things and deal with them on a like basis. That's my comment.

The Chair: There's time for a brief question and answer from Mrs Johns.

Mrs Johns: I appreciate your being here. Your submission talks a lot about your being interested in opportunities that may arise both from the generation perspective and the transmission perspective. We all have talked about and heard — and yesterday we were at the IMO, so we saw — that there is a whole bunch of problems with the interconnect and being able to get power from different areas. I understand that that's quite an expensive business. If the situation was right, would you be interested in providing interconnect or allowing us to share power with other utilities across northeast North America?

Mr Drolet: Oh, 100%. That's the shortest answer I've given today. Why? First of all, because we think, as is Ontario Hydro/Service good at it, we have more miles or kilometres of high-voltage transmission lines than anybody in North America, including Hydro-Québec, which often claims that.

More to the point, how can you create a free market, if I can use the trucking example, without enough roads? How could we have all that transport without enough wires to put it on? I have said in my submission that I think Ontario should look actively at a scheduled planned increase in that. We'd be happy to help in that cause, as I think anybody participating in the market should be wanting to help in that cause.

The Chair: Thanks very much. On behalf of all the members of the committee, we appreciate your coming up and making your presentation to us today.

CANAGEN ENERGY INC

The Chair: Good afternoon. Welcome to the committee. We're pleased you're able to join us this afternoon. Make yourself comfortable. As I'm sure you are aware, you have 30 minutes for presentation time. The committee always prefers that there is time for questions at the end and, as you begin, please introduce yourself for the Hansard record.

Dr Robin Jeffrey: Good afternoon. My name is Robin Jeffrey. I am deputy chairman of British Energy plc, the UK's largest electricity generator. I am also chairman of CanaGen Energy Inc, a 50-50 joint venture between PECO Energy Co and British Energy.

With me here today are two members of the CanaGen team, David Gilchrist, who is the finance director of British Energy in North America, and Susan Brissette, who is head of communications here.

Further information on CanaGen, a company headquartered in Toronto, is given in the brochure, which looks like that, that is attached to your pack. Because there may be some useful lessons for Ontario, this afternoon I would like to draw to your attention three aspects of what has been happening in the UK electricity industry which may be of relevance to your deliberations on Bill 35.

To set the scene, the process of change started in the UK in 1990. In essence, the then government monopoly electricity company, CEGB, was split into four entirely independent entities. These were a fossil Genco known as National Power, a second fossil Genco known as PowerGen, a nuclear Genco known as Nuclear Electric and a transmission company known as NGC, the National Grid Co. At the same time, the 12 government-owned distribution and supply boards were turned into 12 independent free-standing companies, and for the first time each of these was granted the powers to own and operate their generation plant.

Revolutionary as this seemed then, over the past eight years there has been an enormous development in ownership and structure of these various organizations and today

the picture is as illustrated in figure 1, which is the second-last page in your pack.

I'd like to give you a flavour of these changes.

National Power has been transformed from a UK-only company into one of the world's leading independent power producers with a third of its 24,000 megawatts of plant capacity being overseas. It is listed on both the London and the New York stock exchanges.

PowerGen has also successfully expanded internationally and now has a global investment portfolio of some 5,500 megawatts of plant with a further 2,200 megawatts of plant under development.

British Nuclear was created in 1996 through a merger of Nuclear Electric and its Scottish equivalent, Scottish Nuclear, with the new company becoming the first purely nuclear generator to enter the private sector. Subject to due diligence, a PECO/British Energy joint venture is currently finalizing the acquisition of the operational nuclear plant at Three Mile Island and is in discussion with a number of other US nuclear plant owners.

The UK transmission company, NGC plc, which was originally owned by the 12 distribution and supply companies, has been successfully floated on the London Stock Exchange and has become a significant global transmission company.

1500

A new concept of company has been created termed the "multi-utility" which, in the case of Scottish Power, is not only an electricity utility but is also into gas, water and telecoms. The idea of a multi-utility is likely to become the next international best-seller, following upon the UK export success of privatization, "Buy all your utility services from us...only one meter reading...and a tempting discount off your total bill."

Independent generators, unknown in the UK before 1990, now have a significant market presence.

Finally, as you will see from that chart, the Americans have arrived in force and bought up many of the UK regional supply companies although, fascinatingly, over the past few weeks two of the US utilities have announced their plans to sell off their regional companies.

That outlines the change that has taken place in the UK over the past eight years, and now what I would like to do is to stand back and look at that UK electricity scene from quite a different perspective. What has all of this corporate upheaval meant from the customer's perspective?

The change has been quite breathtaking: Electricity prices to end customers, whether industrial or domestic, have been reduced by some 15% to 20% in real terms; the quality of supply to customers has been improved substantially; and the safety and environmental performance of the industry has been significantly enhanced. And if that was not enough, the process has benefited the UK taxpayer to the tune of around C\$100 billion.

Noting that the UK electricity industry is about twice the size of the Ontario industry, what might all of this mean to Ontario and to Bill 35?

The first issue I should like to address is the phrase "low-cost energy through competition," which appears on

the front page of the bill. This seems to me to be the heart of the matter. Low-cost energy is important to everyone; it benefits the private ratepayer, it benefits commerce and it benefits industry. It makes business more competitive and attracts inward investment. Bill 35 rightly identifies that low-cost energy results from competition, that competition is the driver for change.

Today in the UK there are upward of 20 significant generators. Having competition in this way not only puts a downward pressure on prices but it also means 20 different management styles, different approaches to labour agreements, some companies who believe in dash for gas, and at least one company which can see the true light, that nuclear is green, clean and environmentally friendly.

Competition means innovation and a diversity of solutions.

Eight years after its creation, there are many critics of the UK market system, but it has clearly met with a degree of success since electricity prices to end customers have fallen by the 15% to 20% in real terms I quoted earlier.

From the standpoint of one of these generators, British Energy, I know what we have had to do to respond to these competitive forces: output up by over 60%; unit operating costs decreased by almost 40%; and despite wholesale prices falling year on year, turning a loss-making company into a strongly profitable one. That sort of corporate achievement doesn't just happen; it is the result of overhauling our entire corporate culture, learning how to work together as teams, how to communicate effectively, and especially how to reward and motivate our staff.

The latter is particularly important and indeed is perhaps the most important single issue which has been the secret of our success: 98% of all of our staff are shareholders. We have a profit-sharing scheme known as gainshare, where for every \$3 added to the bottom line over and above the corporate plan \$2 goes to the company and \$1 to the staff. This has turned an us-and-them culture into an our-company culture.

The second issue I want to pick up from the front page of Bill 35 is the phrase "protect consumers." This means to me the quality of the service received by end customers.

Many critics of the UK market restructuring argued that moving ownership from the government-owned sector to the private sector would mean that customer interests would be sacrificed for company profits. Nothing could have been further from the truth.

I make no apology for showing you today figure 2, which I also gave to the select committee last October.

The spider's web demonstrates how the 12 regulatory quality-of-supply indicators have changed over the years 1992 to 1997. Outer means bad and inner means good. What hits you straightaway is that all the indicators show strong improvement. This transformation was a direct consequence of meaningful competition and customer choice.

But above and beyond that, there was the open accountability to the shareholder. For you see the sort of information shown in figure 2 is published in the UK, company

by company, and is widely commented on in the media. Shareholders know if the company they own a piece of is performing well or badly, and no chairman will tolerate going to an annual general meeting and being grilled by shareholders on why their company is delivering poor service.

The same peer pressure has also been successful in improving safety and environmental performance. What competitive pressure has taught us is to examine every process. If it doesn't add value, cut it out; if the process is essential, examine it and simplify it. Simpler means less costly, simpler means people understand the process better, and better means safer.

The third area I would like to touch upon is the considerable array of vesting contracts which were created in the UK back in 1990: for example, contracts to protect the coal industry which only phased out earlier this year and arrangements to buffer the nuclear industry which were cancelled only in 1996 when British Energy transferred from being government-owned into the private sector.

Running in parallel with these arrangements was the progressive introduction of true market freedom. Eight years ago only the very large customers could shop around to buy competitively; then in 1994, there was a step change when just about everyone other than the domestic customer could, and later on this year the door will really only start to open on true retail competition for everyone.

The UK was blazing the way with this process and time was certainly needed. In retrospect, it would probably have been better to have worked to a more aggressive time scale, for people will always find compelling reasons to stick with the status quo. History proves that processes don't get any easier by postponing the day of decision.

To conclude, I would like to pull together the themes I have been addressing.

The UK is some eight years down the path that Ontario is about to embark upon through Bill 35. Despite the passage of time, the rate of change within the UK electricity industry is, if anything, accelerating rather than slowing down.

Within the UK, competition has increased and this has had many consequences. It has brought down electricity prices to end customers and improved the quality of service. Because of increasing competition in home markets, it has caused companies to seek to expand globally. It has brought new thinking and international best practice into what formerly was a somewhat old fashioned and traditional industry.

As I said, Bill 35 is clearly an important step. I compliment the government and this Legislature for your boldness. Your deliberations will be followed with great interest.

I also hope that the bill will provide the platform for major inward investment into Ontario so that companies such as CanaGen can bring to the province their experience in providing low-cost energy through competition, their expertise in safety and their belief in achieving through people.

I thank you for the opportunity to speak to you today and, with my colleagues, will be pleased to answer any questions you may wish to ask.

1510

The Chair: Thank you very much. We have five minutes for each caucus. We begin with the Liberal caucus.

Mr Conway: Mr Jeffrey, it's a pleasure to hear your mellifluous tones again. I think you're getting better. God, you were good last year. I think you're even better this year. I was thinking about Lord Beaverbrook for some reason, I don't know why. Don't forget that he got his start in the energy business, sort of.

Page 1 of the brief: The process of changing Britain began in 1990 when the government-owned monopoly was broken into four separate and, I take it, competing, generators along the lines of your description.

Dr Jeffrey: Correct.

Mr Conway: That unbundling occurred within the first year of the policy having been announced. Is that generally correct?

Dr Jeffrey: Yes. There were three competing generators and also the transmission company, but you're correct.

Mr Conway: How important was it for the process that the unbundling at the generation level occurred as quickly as it did after the launch of the new policy?

Dr Jeffrey: I think it set these three companies on their toes. I think it was very important.

Mr Conway: I ask that for the obvious reason, that in our proposal here we are moving in a slightly different way. We are going into a competitive marketplace, but our CEGB is going to be kept together for the foreseeable future. Do you see that as an impediment to the competitive juices that the market would otherwise produce?

Dr Jeffrey: I think that is something for the Legislature to ponder over. Each country must find its own way and its own solution. I was very careful in my remarks to say I just wanted to comment about the UK industry and the way in which competition in the UK had been a driver to price reductions.

Mr Conway: A very judicious answer, and I appreciate it and I understand it. The accompanying document, CanaGen, A British Energy and PECO Energy Team, includes remarks that you made apparently at the conference in Banff earlier this year, May 5. Let me just read from the first page of that document:

"CanaGen is a collaboration between British Energy, which is based in the UK, and PECO Energy of Philadelphia to develop a public-private partnership encompassing Ontario Hydro's nuclear reactors at Bruce, Pickering and Darlington."

How's it going? As we say on public radio, "for the record."

Dr Jeffrey: I think you know the answer to that question. For the record, I think it would be appropriate for me to quote Ontario Hydro in an interview Ron Osborne had with the Financial Post. He said:

"Hydro is still interested in partnerships. We totally subscribe to the desirability of having such partnerships

and we intend to seek out such partnerships. This is a suspension, not a cancellation."

I and my colleagues place a lot of weight on these words.

Mr Conway: I am impressed with the felicity and care that you read Mr Osborne's words. I would, in my last question, like to hear from you, sir, as to how you would characterize the negotiations and the prospects for a public-private partnership in the near and intermediate term.

Dr Jeffrey: CanaGen believes that a public-private partnership is a win-win situation for the province's taxpayers and ratepayers and can add value to the shareholders of British Energy. We regard this as a very important proposal. As a company, we've made a very substantial investment in Toronto; our North America office is here in Toronto. Toronto is an excellent city in which to do business south of the border as well as north of the border. I think we wouldn't be here today if we didn't believe in the future of this proposal.

Mr Conway: As they say on Perry Mason, your witness.

Mr Lessard: Thank you, counsellor.

You've obviously expressed some interest in the nuclear assets of Ontario Hydro. Quite frankly, that causes me some concern, and this is concern that I'm sure you dealt with in the United Kingdom as well. I have some concerns about the privatization or the sale of Ontario Hydro's public assets, whatever they may be, but especially the nuclear power plants. I guess one of the concerns is the regulation of those nuclear power plants. This is an issue that you've dealt with in the United Kingdom, and I would like to know how you dealt with the argument about the regulation as you moved from public to private in the nuclear power business.

Dr Jeffrey: Do you mean there the nuclear regulation or the economic regulation?

Mr Lessard: Nuclear regulation.

Dr Jeffrey: Drawing on our UK experience, and the same applies to the experience of PECO with respect to the Nuclear Regulatory Commission in the United States, I think the first point is that you have to deal with a regulator in a very serious and a very professional way. You have to be very open and honest with a regulator. You have to set out clear plans, and I think for the regulator to have respect for the company, you have to demonstrate an ability to deliver these plans, to perform in accordance with regulations, whether it's nuclear safety or whether it's environmental.

There is the issue I referred to both at Banff and in my remarks a few moments ago about "address every process." If things don't add value — because things which don't add value create complexity — eliminate them, find simpler, better ways of doing things. I think that approach has been understood by the nuclear installations inspectors in the UK.

Mr Lessard: If you're a corporate investor with a nuclear power plant and you're not complying with the regulations, then your stock price will go down.

Dr Jeffrey: It's as simple as that.

Mr Lessard: My concern is, how do the shareholders find out whether there's something that's going wrong? I wasn't on the select committee last year but I know that the members of that committee had an opportunity to look into some very serious concerns and problems at Ontario Hydro about the operation of its nuclear generating facilities.

I ask myself, how did this happen? Was it possibly that the regulators weren't doing their job? We've heard some concerns from the government members about the atomic energy regulatory commission here in Canada not perhaps being as diligent as they should be. If that's the case, and they're the same regulators if you were a private sector owner of a nuclear power plant, how do we make sure that citizens in Ontario don't have any fears about nuclear energy? I think the nuclear strategy was misguided here in Ontario, but we have them; we still have to deal with them. The possibility of them being in the private sector is something that concerns me, and I don't think I'm alone.

1520

Dr Jeffrey: I think, drawing from the UK experience, there was a lot of concern in 1990. The intention had originally been to transfer nuclear to the private sector. The UK government withdrew from that. Between 1990 and 1996, the UK nuclear industry demonstrated its capabilities, its competence, improved its process, and in 1996 the UK government took the decision that nuclear could and should be privatized.

That decision was taken in conjunction with the regulatory authorities. The regulatory authorities looked at all of the arrangements, and I think, perhaps blowing my trumpet, we've come through with flying colours since then. The performance of the industry in the private sector has gone from strength to strength for the very reason that you said: There's now a further imperative for having a track record of excellence. Anything other than that would damage our share value.

What CanaGen has suggested may be of interest here in Ontario. It's not a privatization; it is a public-private partnership, which is quite a different animal.

Mr Lessard: You said in the United Kingdom the government received \$100 billion in proceeds. I wonder who got the best deal.

The Chair: Thank you. We have to move on.

Mrs Johns: I guess there's always an advantage to coming on the first day of a committee hearing and on the last day. I'm hopeful that I can somewhat take my lesson from Ken Starr and ask you some questions about a few things that I've learned and try and get some reinforcement from you on whether they're right or wrong.

Mr Conway: Don't go there.

Mrs Johns: I guess the question I want to ask you is, we've heard a lot over the last two weeks about legislating prices, talking about how we could work forward to say something in the legislation that might talk about price reduction. So we would come through in the legislation and say that there must be a price reduction that is passed on to the consumer.

Can you tell me the impact of putting that into the legislation on competition, especially given the experience you've had in the UK?

Dr Jeffrey: I'll pass by your remark about Mr Starr, unless of course you're a grand jury instead of a legislative committee.

I think it wouldn't be right for me to comment on what would be the effect of putting something like that within the act. I think the best method of dealing with prices, in order to deliver reduced prices, is to set up arrangements which introduce effective competition.

If a number were to be put into the legislation, I would suggest it would be a number that people would find comfort with and they would tend to live close to that number, whereas if you introduce effective competition, then one group competing against another would powerfully drive down prices. I think it would be a mistake to put in a number which would cause people to focus high, rather than saying, "Get your sleeves rolled up, and if you don't deliver a better service and a cheaper service, someone else will."

Mr Gilchrist: Thank you, Mr Jeffrey. I appreciate your comments, particularly the perspective you bring. Perhaps I should compliment you on your hiring practices as well. It's always nice to see some distant relative who made good, particularly from the old country.

I must compliment you on the production of this speech. I don't think I've ever seen a speech reproduced in such a format. I just hope Ontario Hydro doesn't get any ideas on how to spend money, because I'd remind them that you're a profitable company; you can afford to do that.

Seriously, though, in your speech you gave in Banff, you note that the cost of producing a kilowatt hour of electricity has been reduced by 35%. That's an extraordinary percentage for something that I'm sure a lot of people take as a given, that the price is the price and there are somehow great constraints on it or else we would have found those savings to date.

We've heard a number of presentations over these eight days of hearings from groups who have suggested that it's appropriate to open up competition at the supplier level but it's somehow terribly rushed and terribly inappropriate to do the same thing for consumers. I wonder if you could expand a little further based on your perspective, the real-life experience you have lived and worked, on what the pitfalls would be, or conversely the positives, of ensuring that you open up all aspects of the marketplace to competition early on in this process.

Dr Jeffrey: I've worked both in a state-owned monopoly and also in private sector generation companies, in different firms, and I think the very straightforward answer to your question is that it's very comfortable to work in a monopoly, whether it is state-owned or not.

The thing that competition does is it compels you to think very hard and work very hard. It compels you to look for innovative solutions, for better solutions. It makes you think about the end customer in quite a different way, where the customer is king. It's not, "The monopoly will look after you." It's "The customer is king," and if we

don't provide you the service that you want, then someone else will. So my answer to your question is competition, whether it's in generation or whether it's in retail, throughout the line where it make sense to do so.

Mr Gilchrist: If you didn't open it up to competition all the way through, would there be a natural tendency for the wholesalers to keep more of those savings to themselves rather than passing them on?

Dr Jeffrey: I think it's straightforward from my answer that competition causes everyone to look for innovation. It's not just cheaper methods of doing things, because that's only a very small part of the argument; it's to find better methods of doing things, providing a more comprehensive service, providing the service which the customer wants. I think competition is good for customers.

Mr Gilchrist: We agree. Thank you, Mr Jeffrey.

The Chair: Thank you very much for taking the time to come before us this afternoon. We are about to embark on an interesting adventure here in Ontario and we appreciate your advice on this task. Thank you again.

Dr Jeffrey: Thank you for listening to me.

1530

MARKET DESIGN COMMITTEE

The Chair: Now calling upon representatives from the Market Design Committee, in particular Ron Daniels. Good afternoon and welcome to the committee. We're very pleased to have you. We've hardly had a presentation since we started that hasn't referred to the Market Design Committee's work at least several times, so we've been anxiously awaiting your presence this afternoon. You have an hour for presentation time. Before you begin, please introduce yourselves for the Hansard record, and we hope you'll leave time for questions.

Mr Ron Daniels: Madam Chair, I'm Ron Daniels, chair of the Market Design Committee. On my right is Professor Michael Trebilcock, who is director of research for the Market Design Committee. I'm hopefully going to be accompanied by my two vice-chairs from the Market Design Committee, Don Dewees and John Grant, who should be here momentarily.

I have a formal presentation. Hopefully it won't run on too long, and we look forward to answering any questions you might have in relation to our presentation.

First, Madam Chair, I want to thank you and the committee for this opportunity to provide the Market Design Committee's comments on Bill 35, the Electricity Competition Act. As I mentioned before, I am accompanied by several of my colleagues. I hope that when all of them get here they will be able to assist you in any questions you might have in relation to our mandate.

The executive of the Market Design Committee brings a wide range of different talents to it. Michael is a law and economics specialist, an expert in competition policy. Don Dewees is also a professor of economics and has a background in economics, law and engineering, and is an expert in environmental policy. John Grant is a former and very distinguished chief economist with Wood Gundy and

is a seasoned veteran of debates over electricity restructuring, having served as a member of the Macdonald committee. In tandem, I couldn't imagine a more dedicated and able group of colleagues to work with in discharging our mandate, and I want to take this opportunity to acknowledge the very significant contributions each has made to our deliberations.

I also want to take this opportunity to acknowledge the central role and contributions of the 14 stakeholder representatives who have served on the MDC and whose dedicated and constructive participation has been absolutely essential in meeting the timelines specified in our mandate. I believe the province owes each of them a very large debt of gratitude for their energy, expertise and judgment.

In making this presentation today on behalf of the Market Design Committee, I would like to focus my remarks on four key areas. First, I would like to register the MDC's clear and unequivocal support for Bill 35. Second — John Grant is now joining us — I would like to describe the mandate for the MDC and the process we have used in discharging that mandate. Third, I would like to address the key design features of the market we are charged with designing. Finally, I would like to conclude my remarks by focusing on one of the more controversial matters within the mandate of the MDC: the existence of market power at both the wholesale and retail levels of the market, and the measures we have proposed to mitigate market power so that the public interest in a robust and competitive electricity market can be realized.

I offer these comments to clarify the MDC's view on these key issues and to assist you, as legislators, in coming to a determination on how effectively they are addressed by Bill 35.

As I indicated a moment ago, the first point I want to make today is that the Market Design Committee supports Bill 35 both generally in terms of its overall intent and direction and specifically in terms of its proposed content, legal definitions and language.

It is our view that Bill 35 reflects the vision and directions outlined last fall in the government's white paper on electricity restructuring. We also believe that the bill, if approved by the Legislature, will facilitate the creation of a competitive electricity marketplace in Ontario in several key ways: by ending Ontario Hydro's traditional monopoly on generation and opening up the field to other competitors; by creating an Independent Market Operator to ensure that the new, competitive electricity market functions effectively and that electricity customers throughout the province continue to receive high-quality service; by permitting the development of important environmental safeguards to ensure that electricity competition enhances the overall quality of life for the province of Ontario; by clearly separating the competitive and regulated parts of the electricity business both in the wholesale and retail sectors; and finally by strengthening the regulatory powers of the Ontario Energy Board to ensure that effective competition will indeed take place and that the benefits of competition flow to all power consumers, large and small.

MDC members support these broad policy goals and believe that Bill 35 will enable Ontario to achieve them. On this basis, we would respectfully recommend that this committee endorse the bill so that it can eventually be adopted as law by the provincial Legislature.

Let me now turn to the mandate of the MDC and the deliberative process we have used in discharging that mandate. As you are aware, the mandate of the MDC is to provide the best possible advice to the minister on the design of the new electricity market for Ontario. In providing this advice, we have been guided by several key design criteria: efficiency, fairness, reliability, transparency, robustness and enforceability. We have invoked these criteria frequently to determine whether our recommendations would advance the broader public interest in industry restructuring.

The committee's advice to the government is embodied in two interim reports that were submitted to the minister earlier this year. Our third report is due at the end of September, and we will conclude our deliberations by the end of the calendar year with a final report.

One of the clearly unique features of our mandate was the minister's decision to charge a committee consisting of 14 different stakeholders with the task of designing the new market. I must confess that at the time I was asked to serve as chair of the MDC, I was more than a little apprehensive about the task of having to chair a group of 14 stakeholders, each of whom, I expected, would have a fairly clear sense of their sponsoring institution's private interests, but with little real appreciation of, or commitment to, the public weal.

I, along with my fellow members of the MDC's executive, feared that most of our time would be invested in managing discordant stakeholders. Nevertheless, one of the unexpected pleasures of this brief has been the interactions that I and other members of the executive have had with our members.

The truth is that our deliberations have time and time again been characterized by the capacity of the private interests represented around the table to coalesce around some broader vision of the public good. More than that, through direct incorporation of stakeholder perspectives and interests on the MDC, we have been able to merge, I believe, principle with politics. In other words, while there has been a healthy give and take among members of the MDC, our politics have been disciplined by a firm sense of principle and by the experience of what has and what has not worked in other jurisdictions.

Welcome, Dr Dewees.

Mr Don Dewees: Thank you.

Mr Daniels: Yet we have not confined our deliberations solely to members of the MDC. Through timely dissemination of background memoranda, working papers and draft proposals on our Web site, we have sought to share our provisional views on the design of the market with the public at large. Indeed, as of last night, the MDC's Web site had 29,643 hits. This interest has been reflected in our receipt of a significant number of letters, comments and formal submissions from non-represented

stakeholders, which have been circulated to every member of the MDC and have clearly shaped our deliberation. As well, we held an international conference in the spring to which we invited more than 150 individuals to attend.

Thus, although our timelines have, to say the least, been tight, we have done our best to ensure that our deliberations have been open and transparent to the public and that our consultations have been informed by the public's reactions to our work in progress. Given this process, what has the committee recommended?

In our first report we focused on the establishment of the Independent Market Operator. Under the model we proposed and the government endorsed, the IMO will be responsible for managing the secure operation of the integrated power system, for determining system capabilities and operating rules, and managing real-time dispatch within these capabilities. The span of the IMO's responsibilities is based on the need to ensure that an independent and credible agency is charged with the task of operating the market in a way that ensures that generators and various downstream retailers operate on a level playing field with one another, no matter what their size or economic interest.

The IMO is to be governed by a hybrid board structure composed of stakeholders and independent interests. Our recommendation for a hybrid board structure was based on our desire to marry the benefits of expertise with the benefits of independence. While other jurisdictions have opted exclusively for one type of representation over another, we believe that the public interest is best served by fusing these perspectives on the IMO board. We have, however, been cognizant of the limitations of the hybrid board structure and propose various voting rules that confer significant power on independent directors over certain fundamental matters.

Turning to the design of the wholesale market, the MDC has proposed the creation of a market in which market participants will enjoy considerable flexibility in their commercial activities. For instance, the MDC endorsed the right of market participants to enter into financial and physical contracts for the delivery of electricity. Although these transactions share many similarities with one another, there are fundamental differences in the form of settlement entailed by each and the tracking that is required by the IMO. During our deliberations, we were informed that certain interests within the province require physical bilaterals and the committee has supported the extension of this option, provided that the market rules ensure comparable treatment, system pricing and cost-sharing between physical and financial transactions.

The committee has also endorsed the need for a staged introduction of congestion pricing into the market. The committee was of the view that some form of congestion pricing is necessary to support accurate and reliable investment in enhancements to both transmission and generation capacity. These price signals ensure that generators and loads will observe the impact of their decisions to provide or to take electricity at locations that suffer from transmission constraints. In the absence of such

locational price signals, the fear is that a prospective generator will not be able to identify those locations where the need for investment in new generation is greatest and may, as a consequence, devote scarce investment funds to locations where generation is already constrained off the system because of transmission limitations.

1540

The MDC believes that the benefits to the province of a well-designed congestion pricing system are substantial. However, as indicated in our second report, we recognize that the implementation of such a system is complex and we have therefore recommended that for the first 18 months of the market's operation, the IMO calculate and publish, at least monthly, hourly nodal prices and that by the beginning of the 19th month of market operation some form of congestion prices be used for settlements for generators and wholesale market buyers.

In terms of the retail market, the committee has proposed the adoption of a quick-start regime that will allow the province to realize the government's commitment to full retail competition in the year 2000. This commitment reflects the government's determination to ensure that every consumer in the province is able to realize the benefits of wholesale competition at the time of market opening. These benefits include lower prices, greater choice and innovations in products and services.

It may be worth noting, however, that although other jurisdictions have set ambitious targets for implementing retail competition, some have been forced to delay or change their start dates because of the technical complexities involved in implementing this goal. It may also be worth pointing out that Ontario's target for implementing retail access is among the most demanding of any jurisdiction that has undertaken electricity restructuring.

After much study and careful deliberation, the MDC concluded that a cost-effective, quick-start version of retail competition for all customers can be achieved in the year 2000. Briefly, our plan would require the distribution companies to pass a customer's bill on to a competitive retailer, when requested by the consumer, and to compute the bill using the hourly spot market price. This pass-through mechanism enables the customer to enter into financial contracts with retailers indexed against the wholesale price.

Of course, many residential customers will initially choose to stay with their current electricity supplier, in which case they will receive a standard service offer. Our second report recommended that the standard offer be a smoothed spot price. We are now contemplating other options for default supply, including a fixed price.

We also believe that by requiring all electricity retailers to be licensed by the OEB, consumers will be protected from unscrupulous and misleading retailers and the kind of questionable business practices we have occasionally seen in other deregulated sectors.

Another critical focus of our work has been on the impact of the market opening on environmental concerns. In chapter five of the MDC's second-quarter report, we address the white paper's direction to ensure that environ-

mental protection goes hand in hand with the adoption of a competitive electricity market.

One concern that has arisen in relation to the prospect of competition in electricity, for example, is that downward pressure on prices could encourage some generators to cut corners, particularly with respect to meeting environmental obligations. Another concern is that with the emerging continental market for electricity, Ontario consumers might choose to purchase power from out-of-province suppliers whose facilities might be required to comply with lower environmental standards than those in Ontario.

To ensure that electricity competition protects Ontario's environment, and therefore the quality of life enjoyed by all Ontarians, the MDC has made a number of recommendations, including the adoption of an emissions cap and trade program to prevent air pollution emissions from increasing beyond levels that would have occurred without restructuring; green power marketing program to allow electricity consumers to express their preferences for environmentally friendly forms of power generation; and a generation labelling program to inform all consumers about the energy source and pollution emissions associated with the electricity they purchase.

These would all be market-based programs and we believe they would enhance the overall environmental quality in Ontario. We believe these recommendations reflect government directions outlined in the white paper and its concern to ensure socially desirable outcomes engendered by the move to competition.

Having identified our key market design recommendations, I would now like to focus on the problem of market power, both at the wholesale and retail segments of the industry, and the efforts we have made to ensure that the market that is being designed for Ontario will be competitive and efficient, two goals that were given pride of place in the government's white paper.

Market power, as you know, arises when one company or even a few large companies dominate the market. If and when these dominant companies decide to take advantage of their dominant position, they may try to drive up prices beyond competitive levels. They also may engage in unfair practices calculated to force some companies out of business and/or to prevent others from getting into it.

Last week I understand that this committee heard a presentation from Ontario Hydro's president and chief executive officer, Mr Osborne, who confirmed that at the onset of Ontario's competitive electricity system Genco will have an 86% share of the province's generation capacity. As he has pointed out, this has led to a great deal of discussion about whether there can be true competition in the presence of such a dominant supplier. The question, of course, is, how can we have a truly competitive market in Ontario when one generator owns such a large percentage of the productive capacity?

In other jurisdictions the answer to this question has often been to break up the existing monopoly through divestiture, normally by dividing the monopoly into several smaller companies, selling them off and forcing them

to compete. However, the government's white paper stated very clearly that this approach is not an option for Ontario Hydro. Although there have been times when we were tempted to debate this option, we have respected our mandate and have focused on the development of non-divestiture mechanisms that will mitigate Genco's market power.

The MDC has studied the market power problem in considerable detail over the past few months and our second-quarter report makes specific recommendations to the government on how to curb Genco's market power in the short term while reducing it over time. We believe that an effective package of market power mitigation measures must accomplish three things: First, the measures must control Genco's ability to exercise market power as long as the company remains Ontario's dominant power generator; second, the measures must encourage the development of competitive alternatives so that over time Genco's dominant position in the market will be reduced; and third, the measures must provide some incentive or inducement for Genco itself to work towards reducing its dominance of the market.

In addressing the market power issue, members of the MDC were firmly of the view that proactive rather than reactive measures should be the preferred option. That is, instead of relying principally on reactive instruments such as regulatory interventions by the OEB, we believe that relatively clear rules of the road should be put in place that would anticipate and effectively respond to the reality of Genco's market power at the time of the market opening so that investors would have confidence in the marketplace as soon as possible. This is particularly important given the long lead times for investors to realize returns on investments in new generating capacity. But, of course, certainty of rules is also of value to Genco in its future decision-making, given its new commercial orientation.

In thinking about the precise mitigation measures that should be deployed, we have focused considerable attention on the vesting contract. Such contracts have been used successfully in a number of other jurisdictions to achieve market power mitigation. Essentially, under such a contract the price of some significant portion of an incumbent's capacity is vested or locked in at pre-specified prices and quantities that attempt to replicate outcomes which would be achieved in a competitive marketplace. The benefits of these contracts are clear:

First, it would ensure that Genco would not be able to reduce its base load capacity so as to induce supra-competitive prices.

Second, it would reduce the incentive for Genco to manipulate prices on the non-vested portion of its portfolio, again through the withdrawal of capacity, because Genco would not be able to recover any monopoly rents on the vested portion of its portfolio.

Third, the creation of a vesting regime would impart price stability to those participants anxious to secure a fixed price for future delivery of electricity.

Fourth, the vesting contract would provide strong incentives for Genco to reduce its operating costs because

it would still reap the benefit of any cost savings that are achieved from the contracted price.

In addition to vesting a significant portion of Genco's capacity, the MDC has recommended decontrol measures — and this is our term — of Genco's marginal or price-setting plants. Whereas the vesting contract removes the incentive for Genco to exercise its market power, decontrol deprives Genco of the ability to do so. Decontrol measures take a number of different forms. We have cited several examples: long-term leases, asset swaps, auctioned capacity or bidding rights and outright sales of plant. If adopted successfully, decontrol measures increase the likelihood that competitive market forces will drive system prices, thereby providing accurate investment signals to prospective entrants.

1550

In tandem, the MDC believes that this regime offers the best prospect of providing meaningful constraints on market power given the white paper's proposed structure for Genco. I should emphasize that our recommendation on this issue, like the vast majority of decisions we have made, received the support of every member of the committee.

However, as I indicated earlier, concern over market power is not confined solely to the wholesale market. If left unchecked, the LDCs' monopoly over the wires business also poses significant market power risks. Both the MDC and the government have been cognizant of the retail market power problem and have addressed this issue in several ways:

First, by insisting that local distribution companies provide retail customers with the wholesale spot price pass-through. This option limits the extent to which downstream customers can be obliged to pay inappropriately high prices for energy.

Second, by subjecting the natural monopoly components of the electricity system, transmission and distribution, to incentive-based regulation by the OEB.

Third, by attempting to confine the LDCs to providing only those services which use true natural monopoly functions. This means, for instance, that functions such as management of the financial risks of spot price volatility, demand-side management services and metering services can all be remitted to the competitive marketplace.

Fourth and finally, by ensuring that the LDCs do not enjoy an advantage in the competitive segments of the industry, the MDC's recommendations will limit the scope for abuse of market power in the retail market.

As with our other recommendations to mitigate market power at the wholesale level, we believe that the rules for retail competition should be established before the introduction of competition to ensure that the regime is as clear and as stable as possible from the start so as to minimize regulatory costs and confusion.

Because our proposed approach to retail competition gives consumers the greatest possible flexibility and choices, we believe that retail consumers and the informed purchasing decisions they will make will play an important role in the evolution of a more competitive and

dynamic electricity market. In a relatively short time, for example, we would expect Ontario's retail electricity sector to offer consumers a range of price and service options that is similar to those offered in other industries and services, for instance, the long-distance market.

Let me conclude by thanking your committee for the opportunity to address you today. I will summarize very briefly the main points that I have made here.

First, the Market Design Committee supports the general provisions of Bill 35 and believes its adoption into provincial law is in the broad public interest.

Second, the MDC believes that Bill 35 reflects government policy directions enunciated in last year's white paper and also reflects the best possible advice that we have been able to provide on how those directions can be best pursued.

In terms of the MDC's recommendations on market design, on the need to protect the environment, on measures to curb and reduce market power at the wholesale and retail levels, we believe the adoption of Bill 35 will enable the government to create an electricity market that delivers major benefits to power consumers, including lower prices, greater choice and innovations in both products and services.

As we understand it, in all these ways the proposed legislation will advance the ultimate goal of this committee and of these hearings, namely, to protect the economic and social interests of electricity consumers in Ontario.

Thank you. I and the other members of the executive, who are now all in attendance, welcome your questions.

The Chair: Thank you very much. You have left us with 10 minutes of time for questions from each caucus. We begin with the NDP caucus.

Mr Lessard: Thank you very much for your presentation. I was wondering what is going to be in the third report of the committee that's supposed to be coming out in September.

Mr Daniels: What you'll find is not nearly the same type of report that we've furnished in the past. Right now we are into technical implementation issues, and that means the kind of report that we will furnish will really just report our progress on the various market rules that we're developing on the bylaws for the IMO, just report on a range of different activities that we're currently undertaking.

But in terms of the high-level design principles we believe are necessary to implement the new electricity market, we believe most of that advice has been furnished in the first two reports. There will be some additional high-level design material that we will provide on aspects of transmission and distribution and we would expect that we will have further work that we'll wish to provide on mitigation of market power at the wholesale level. We might do some further work on the retail side. But ignoring those matters, I don't expect there will be a lot of other high-level design issues that we'll be looking at, and the focus will be on reporting our progress on the development.

Mr Lessard: Are any of the issues that you expect to be dealing with environmental issues, suggestions with respect to any of the regulations we may be looking at to implement some of these suggestions you've made with respect to protection of the environment?

Mr Dewees: If I might answer that, the second-quarter report identified one area in which we were doing further consideration. We looked at renewable portfolio standard as an additional measure for environmental protection. We are going to continue that discussion in the third quarter and we may well have further advice with respect to that matter in the third-quarter report.

On most of the matters, however, we made our recommendations in the second-quarter report and directed them to the Ministry of the Environment or to the Ministry of Energy, Science and Technology, and we don't expect to have more to say on those matters.

Mr Lessard: I guess this is more of a comment than a question, but after we've gone through eight days of hearings and we've had an opportunity to hear from you and read your report with respect to environmental issues, we've had a number of suggestions from people about ways in which we can ensure that the quality of the environment is enhanced as a result of Bill 35. One was the renewable energy portfolio standard, and there was system benefits charges as well. However, we haven't heard from the Minister of the Environment on any of those issues or what they expect to do to address them. It's unfortunate that we haven't heard it from anybody from the ministry, because that's where you say that you've provided your suggestions.

Time and again we've heard that the initiatives that you've suggested, the cap and trade program and others, aren't going to be sufficient to improve environmental quality through this bill. We heard just today from the Canadian Energy Efficiency Alliance, from the Ontario Clean Air Alliance, from the Sierra Club, from Greenpeace, and yesterday we heard from the Ontario Medical Association, that the only way to ensure that we improve the quality of the environment is through a renewable energy portfolio standard or some other method.

In the comments that have been made today, it says that you believe the recommendations you've made so far would enhance the overall environmental quality in Ontario. I'd like to know how it's going to do that. How do you make this statement?

Mr Dewees: I think there are a couple of responses to that. First, for me and I think for many on the committee, the air pollution emissions cap and trade recommendation is a central recommendation for protecting the environment. To the extent that when we talk about environmental concerns we're talking about air pollution, the cap and trade mechanism would provide a limit on the total air pollution emissions that can be discharged in Ontario.

We don't say in our report exactly what that limit should be. We said that the limit should be set so that it does not allow more emissions under a competitive market than would have occurred otherwise. But it is at the discretion of the government to set that limit, and the limit

can be set at a level that will ensure no environmental degradation; it can be set at a level that ensures environmental improvement.

Over the years the history of environmental regulation has been one of setting emission standards or air quality standards and over time reducing those allowable emissions. If that is done within a cap and trade program, that can ensure that the air pollution emissions associated with electricity generation decline over time. It seems to me that if air pollution is the central concern, this is the mechanism that gets right to the heart of the concern. That's why I think that our recommendation is indeed very protective of the environment.

1600

Mr Lessard: You made a comment that caught my attention, and that was the caps on emissions for generators in Ontario. There has been some suggestion that the regulation-making ability in this legislation would actually be able to cap emissions for generators from outside of Ontario which are supplying power to Ontario. We heard from somebody from AEP Resources, a large power-generating corporation in the United States which has a number of coal-generated plants, who took issue with the ability of Ontario to enforce emission standards on generators outside the province of Ontario. You're saying that these caps are for generators in Ontario. Is that the idea?

Mr Dewees: I was a little too modest in what I said a moment ago. Our recommendation actually said, first, that emissions should be capped for generation in Ontario, and second, that regulations should be developed to ensure that generation of electricity, if it's imported into Ontario, does not increase emissions beyond those which would occur if the electricity were generated within the province.

You've raised an important question, which is exactly how that would be done. We haven't solved that legal problem. That raises a number of problems in trade in international law which we simply don't have either the competence or the time to resolve, but our recommendation was that the government look towards mechanisms that would do exactly that. I don't believe that the situation with competition would be any worse than the situation we're in today. I believe that if we had a cap-and-trade program, it might be possible — we're not certain about this — to require that those who import power into the province participate in that program so that the cap that's set is one that applies to all generators of electricity that's sold in Ontario.

Having said that, we didn't work out the legalities of that mechanism and that remains to be seen — you're right, there is an implementation problem — whether the government of Ontario has the legal capability, or the extent to which it can legally control sources in other jurisdictions, but I believe we will discover that that capability is significant and we've recommended that the government exercise it.

Mr Lessard: I guess that's part of my concern. Until I get that satisfaction, I'm not sure that it's going to work, and if it doesn't work, we're left really with market-based mechanisms that the government keeps telling us are the

way to provide customer choice. Customers will choose to purchase renewable energy or green energy sources. I'm not sure that is going to work completely because I'm sure that in looking at this issue, you must have had to look at some statistics to determine how much more people are going to pay for renewable energy and what impact those market-based mechanisms may have on improvement of environmental quality. Were those some of things you looked at?

Mr Dewees: They are two separate issues. Once again, I think the cap and trade provides a powerful limit on emissions within Ontario, and with respect to power imports I think it provides in fact a better mechanism in dealing with imports than we have today. The green power marketing is another means of encouraging generation with environmentally friendly resources and we looked at that. I think that will be beneficial as well but I see the cap and trade as the first and primary protection of air quality in Ontario.

Mr Lessard: My question is, what if it doesn't work?

Mr Dewees: With respect to generation in the province, it has to work unless the Ministry of the Environment doesn't enforce it. If they put it in place — we have regulations today. If the regulations are enforced, they work. We have no reason to believe that the government's enthusiasm for enforcement is going to change. So just from looking at the regulatory regime, cap and trade will do at least as well as what we have now.

You're asking how much it can extend outside the province. That's a good question, but given the size of our inter-ties, there's a limit to how much can come in in any event. Ontario Hydro can import power today. There's not, to my knowledge, an environmental limit on its imports, so I don't see the advent of competition creating any new environmental problem that does not exist at the present time so long as cap and trade is in place to limit these emissions here.

Mr Lessard: I hope you're right for the sake of the people I represent in the Windsor area who have to deal with transboundary air quality problems from Detroit, Michigan, and from the Ohio Valley as well. We deal with the impact of coal-fired generation in the United States and anything that would control those emissions would be an improvement to the environment in the area I represent.

Mr Dewees: I agree. In Toronto we breathe air that blows in from the US Midwest as well and we share those concerns. In the year 2000, sulphur dioxide emissions from all US coal-fired power plants are going to be subject to the US cap-and-trade scheme and so there will be an absolute limit on the amount of discharge within the United States. That would be nicely matched if we had a similar program in place on this side of the border.

Mr Lessard: Will those caps include emissions other than sulphur and nitrogen oxide?

Mr Dewees: SO_x and NO_x.

Mr Lessard: Will it include mercury, lead and PCBs, for example?

Mr Dewees: No. None of that is covered under that program.

Mr Galt: Thanks for the presentation. My apologies for being pulled out. I hate to bring this to your attention, but this morning your organization was being criticized by the Canadian Energy Efficiency Alliance. They were making reference to system benefits charges as it relates to energy efficiency and possibly also to environmental protection. I'll just read a couple of their sentences as they make reference to your second interim report:

"It is clear from the composition of the committee that their strengths and motivations are related to electricity supply and free market competition, not efficiency. It is even clearer reading the report...that energy efficiency was not an issue well considered by the committee." Would you like to comment on that and the relation to system benefits charges?

Mr Dewees: I have to disagree with the characterization that you've presented to us. We did consider energy efficiency. We discussed it at some length and we discussed the system benefits charge at some length. We believe that the recommendations we have made will promote energy efficiency in the first place by establishing a spot market with hourly prices that we provide to customers who have interval meters, that is, a meter that can display the price every half-hour or every hour. The market will give those customers the maximum information about their energy consumption and the price that consumption imposes at every hour of the day, and that provides incentives for the consumers to conserve electricity. The higher the price, the greater the incentive. We think that having an efficient, competitive spot market is one mechanism to encourage energy efficiency.

By recommending cap and trade, we have implicitly increased the cost of using methods of generation that discharge air pollution, because that pollution will have to be controlled consistent with the cap and trade and that in itself will provide incentives for consumers to conserve electricity. We believe that retail competition and competition in metering will encourage energy service providers to work with customers to identify their consumption patterns, the cost of those consumption patterns, through more sophisticated metering and means of conserving energy. We think that the competitive market we're creating is going to be a better market in which energy service companies can work with customers to implement energy efficiency programs. I think we're improving the market for energy efficiency.

Mrs Johns: I want to direct my first question to Dr Daniels. We've heard a lot over the last two weeks about market power and those kinds of issues. As you're well aware, and I think everyone around the table is, the government is really concerned that we're introducing a competitive marketplace. I was wondering if you could give us some level of confidence that those market power mitigation measures that you introduced in your second paper will lead to an increase in competition and will make the market a competitive market which will bring in new generation, new transmission and new opportunities,

of course, for the people who pay the electricity bills in Ontario.

Mr Daniels: I'm going to take a start at this question and ask Michael Trebilcock, who's been working very closely on this matter, to also chime in.

I think there's no question that there are significant challenges posed by the structure that we at least start off with, given that, as I mentioned in my formal remarks, Genco will have a significant share of the market in generation. As I also mentioned, there have been other ways of dealing with that market power problem in other jurisdictions. Divestiture is one option, but there have been other options that have been utilized.

1610

We have worked quite vigorously on this matter and have sought international counsel as to how we best deal with the market power issue, recognizing that it's very important that there be some credible constraints on Genco at the time of the market opening, that they won't exercise market power or we won't see that investment. It seems to be clear within the white paper that we have to achieve that result. The question is, how do we do that short of the divestiture option?

I think this vesting contract on the bulk of Genco's electricity that it will supply, which will essentially limit the amount of profit that Genco can realize on the electricity it supplies, coupled with the various decontrol measures that we recommend for the marginal or price-setting units, constitutes a very credible market power mitigation regime. It's something that we're trying now in a very dedicated way, with representatives from Ontario Hydro, to work out, the subtleties of the regulatory regime, but we have every reason to expect that the regime will in fact work. Vesting contracts have been used to mitigate market power in other jurisdictions and so we remain optimistic that they will work here. Again, by transferring control over the marginal units to competitors, we believe that's a very credible way of making the market more competitive at a fairly early stage.

Mr Michael Trebilcock: The question you pose raises a good many complexities for us once we take out the easy solution, which is to break up Genco into five or six competing generating facilities, which we accept is an option that isn't presently on the table. So short of that straightforward option, we're forced to consider a number of more complex options.

Essentially with market power problems, with a firm here with 90% market share, there are really only two ways one can go: change the structure of the market or constrain behaviour, adopt structural responses or behavioural responses. Structural responses have in part been ruled out. That would be changing the structure of the market by creating more generators.

What the vesting contract does is it attempts to change behaviour, that is to say a financial arrangement which says, "If you, Genco, try and push up the market price, beyond some level you cannot capture profits from that strategy and indeed these profits will be transferred," in our thinking maybe to Holdco, the provincial holding

company, by way of reducing stranding costs. This would be designed to remove incentives to monopolize the price by removing the profits from so doing.

The other measures the chair has mentioned, that is, measures on the margin with the marginal plants, typically fossil and some peaking hydro plants — these are the plants that would be the last in in any given unit of time, particularly at peak times, and will therefore set the system marginal price, a price, it bears emphasizing, that every generator during that time period gets. Perhaps this is insufficiently appreciated. You're bidding at 5 o'clock at night, generators bid in until enough capacity is bid in to satisfy demand and the last plant you need to satisfy demand sets the price not only for itself but for all the other lower-cost plants backed up behind it. So it's a particular concern of ours as to who controls these marginal plants, because if you add in both the lower-cost plants backed up behind them and the marginal plants, there's obviously enormous incentive to push up the price that you bid the marginal plants in in order to capture returns not only on the marginal plants but also on all the lower-cost plants backed up behind them.

So we are particularly concerned about Genco's control not only of the base load plants but the marginal price-setting plants, and there we think we have to be somewhat more aggressive in our recommendations and indeed propose some quasi-structural measures that would break up operating or price-setting control over those plants through long-term leases, asset swaps, sales, auction bidding entitlements, something that ensures that Genco cannot control the price-setting behaviour in this market.

Mrs Johns: My last question is about low-cost energy. In the title of this bill we talk about low-cost energy. I just wanted to know what opportunities you see in the bill or have recommended in the market design that don't have severe price volatility, that we could manage price volatility.

Mr Dewees: I think there are several aspects of our market design that will help to control price volatility. We know people are worried about this because of some experiences that have occurred in the United States — in the Midwest, in California — during earlier parts of this summer.

It bears remembering that the conditions, at least in the US Midwest that gave rise to some very high prices, are very different from the conditions we have here. They do not have a competitive market with price disclosure, a spot price and the sort of bidding mechanism that we have here. Those high prices in the United States were a result of bilateral exchanges among utility companies which are still vertically integrated. So it's really not a comparable situation at all.

We are looking at a market in which the spot price will be visible to all players at all times. There would be a day-ahead market so you can anticipate what the price will be. We will be looking at demand-side bidding in which large consumers who saw a high price coming because of weather forecasts and other forecasts for the next day could say: "Hey, if it gets above \$100 a megawatt hour,

cut me off. I'd rather do without." That will by itself help to reduce the price volatility.

In terms of the default supply that we've recommended for consumers, we've suggested a smooth spot price which would be averaged over a period of a year. You can absorb an awful lot of volatility by averaging over a long period of time. So we think we have a market design that will avoid the problems we've seen elsewhere.

One advantage of our not being the very first in the world or in North America to design a competitive market is that we can learn from those who have gone before us and hopefully provide a design with a better performance than they've experienced.

Mr Conway: Thank you, gentlemen, for a stimulating presentation. We are met on this battlefield because we all apparently believe in the benefits of competition and what that's going to deliver in terms of better electricity rates for all classes of electricity consumers in Ontario. That is the policy framework that brings us together, all of us, and I think it is widely shared. That's my perspective.

I want to start with you, John Grant, because you've been sitting there very benignly. You put your name to a report two and a half years ago that said, and let me quote directly:

"Separating Ontario Hydro's generating assets to create distinct competing entities is an essential step in opening up the electricity supply market. Indeed, without taking this step, the full benefits of competition will not be realized."

Later, on page 57 — that previous quote was on page 56 — you and your colleagues at the Macdonald committee went on to say, "The separation of Ontario Hydro's generation assets into a number of distinct competing generating entities is necessary both to give customers choice among suppliers and to promote competition in electricity supply."

That report is of course replete with even more delicious examples of the first-order importance of unbundling Ontario Hydro's generation monopoly. That was John Grant in the Macdonald committee.

You've all penned your names to an even more interesting report, which I received five weeks ago and which I appreciated and read with some care, generalist though I am. Let me read from page 2-3 of the second interim report of the Market Design Committee. Quoting you, gentlemen — and you're the experts, you're the wise men from afar. We are mere legislators.

Mr Dewees: It's not that far.

1620

Mr Conway: Well, it may not be that far. Trudeau and company didn't have to go very far from Montreal to Ottawa, but they made the trip nonetheless to advise the nation. You're advising us on matters that are enormously complicated and, like wise men, you've got a right to give us the benefit of your considered opinion.

So what do you say in page 2-3? "We concluded early in our mandate that the decision to leave Ontario Hydro's generation assets within a single corporate entity with no constraints would be a serious impediment to developing a

fair, efficient and competitive electricity generation market in Ontario, and that such a decision would likely result in market participants and other investors refusing to risk their capital and efforts in this market. The effects of an unfettered Ontario Hydro acting in a nominally competitive market would be to send inappropriate price signals to investors and market participants, attenuate market discipline on costs, and offer fewer choices for consumers — outcomes that are inconsistent with the government's policy objectives for electricity industry restructuring."

Those are, from wise men, fairly direct words. John Grant, since you have signed on to both of these reports, I want you to tell me and the millions of Ontario electricity consumers how they are being well-served and how their rates are going to come down as a result of Bill 35 and the attendant policy, which clearly does not contemplate in the first instance that which you in two different reports said was essential, the sine qua non without which we would not get the one thing we all want, which is moderated and hopefully reduced electricity prices, not just for the big boys and girls in industry and commerce, but for the plain folks in Willowdale, Wyoming or Wanapitei. So will you help me with that?

Mr John Grant: Well, Mr Conway, we confront each other with equal benignity, I think. I'm glad you raise the topic of the Macdonald committee's report because I think that was a signal report. I'm very proud to have served on that committee and I still believe that their recommendations provided the government with the right kind of initiative and momentum to put us where we are today.

That said, I'm also very proud to be serving on this committee, which, as our chair has said, is a remarkable example of pulling people from very diverse industry backgrounds and interests together and finding common purpose with them and between them and among them.

Mr Conway: Agreed on both points.

Mr Grant: On the issue of market power, as our chair has said and as Professor Trebilcock has said, certainly the members of the executive of the MDC have made no bones about the desirability in some ideal world of having divestiture. In many jurisdictions it's been almost the natural option to pursue, but that wasn't open to us under the white paper. Given that, and our mandate to follow the dictates of the white paper and try to make them work effectively, we do think that we have found — we are in the processing of finding, I should say, because we're still working with Ontario Hydro and with the government to work out the details of the contracts and proposals that the dean and Professor Trebilcock have discussed to make effective mitigation a reality.

Mr Conway: All right, I appreciate that, John.

Let me ask Professor Trebilcock. Let me make it easy. I am a residential electricity consumer living in Willowdale and I don't understand any of the particulars of this. I trust smart people like you to advise good government and a better Legislature to do the right thing. Now, what I want to know is very simple: Under the existing framework, as you understand it and could imagine it being applied — I'm that consumer up in Willowdale; my current elec-

tricity bill provided to me by my utility is \$1,000, 1,000 1998 dollars for the sake of this argument — when and by how much will my bill go down?

Mr Trebilcock: That's a very good question and I wish I could answer it.

Mr Conway: It's important, because you're the experts and —

Mr Gilchrist: Why?

Mr Conway: The member says, "Why?" Because this is being offered up as a policy that is going to deliver, to read that which is not in the purpose section of the bill but the bill is entitled, "An Act to create jobs and protect consumers by promoting low-cost energy through competition." I can read, so this is all about providing low-cost energy.

I'm back to my point, Professor Trebilcock. You're the expert. It's 1998. My residential bill is \$1,000. We have this framework. You know it better than I. When and by how much will my bill go down from the existing \$1,000, assuming constant dollars, and assuming the same level of consumption?

Mr Trebilcock: I can't give you a number on that and I think it's unrealistic for anyone, not just me, to pretend that they can offer a number. The first point is, the stranding costs have to be recovered. These are costs that have been incurred from prior investments that are no longer used and useful for the duration of the period required to recover these costs or these prior investments. This constitutes a drag, so to speak, on electricity prices.

Mr Conway: Is it possible that the stranded debt and its disposition could in fact in the near term push prices up a bit?

Mr Trebilcock: I hope they would not go up, if that's the question.

Mr Conway: Is it possible that they could go up as a result of the stranded debt recovery?

Mr Daniels: I think it's important to emphasize we're paying for the stranded debt now.

Mr Trebilcock: We're paying for it now.

Mr Daniels: It's just embedded in the price. It's not being broken out.

Mr Conway: My problem is that I've got an Ontario Hydro report that just parked \$8 billion worth of write-down. That's not in my current bill.

The Acting Chair (Mr Doug Galt): Thank you, Dr Daniels and company for coming before us. This indeed is a very complex issue, as we've just found out here.

Mr Conway: I'm beginning to think I should go to church and not go to committee, because this is all about prayer and faith. I'm in the wrong place.

Mr Gilchrist: We've been saying that all along.

The Acting Chair: We wish you luck in working towards your final report. Thank you for coming before us.

1630

LINCOLN, PELHAM AND WEST LINCOLN HYDRO ELECTRIC COMMISSIONS

The Acting Chair: We now call our last, but not least, delegation. They might be interested to know that they are the 91st delegation to come before this committee over the eight days that we have been sitting. It's Lincoln Hydro, Mr John Alton, if you'll join us at the table.

Mr Conway: The honourable minister returns. He looks more ministerial, more senatorial than when I saw him last.

Mr Philip Andrewes: Especially when you're the 91st delegation.

The Acting Chair: You know what kind of a mood we're in, eh?

Mr Alton, if you don't mind introducing yourself for the purpose of Hansard, and your guest also.

Mr John Alton: We appreciate that, and what I'd like to do, Mr Chair, is introduce our chair of the Lincoln Hydro Electric Commission. We've prepared a presentation and he'll introduce me, which is only proper, seeing as I work for him.

Mr Andrewes: Thank you, Mr Chairman, members of the committee. My name is Philip Andrewes and I indeed have the privilege of chairing the Lincoln Hydro Electric Commission.

I did once have the privilege of sitting on this committee, Mr Chairman. I occasionally occupied your position and chaired it briefly for a few months with an aspiring young member by the name of Harris, who may be familiar to you.

Mr Conway: They were both good chairmen.

Mr Andrewes: Thank you, Mr Conway.

Mr Chairman, members of the resource development committee, thank you for the opportunity to address you on the proposed electricity restructuring legislation, Bill 35.

As I mentioned before, my name is Philip Andrewes, the chair of the Lincoln Hydro Electric Commission. With me today is the general manager and secretary, John Alton. Also with us, as you can see by the cover page, are Brian Walker — these are members seated behind me — the chair of the Pelham Hydro Electric Commission, and the secretary of the Pelham Hydro Electric Commission, Mr William Gee. West Lincoln Hydro Electric Commissioner, Willis Copeland, and the general manager of the West Lincoln commission, Dennis Percy, are also in attendance.

All three commissions have received and approved the submission which we are presenting today.

As a matter of background, the town of Lincoln passed bylaw 94-206 on December 29, 1994, as authorized by the Power Corporation Amendment Act, 1994, known as Bill 185. The bylaw directed the Lincoln Hydro Electric Commission to expand its service territory from the former village of Beamsville to the entire town of Lincoln.

The Power Workers' Union subsequently appealed the bylaw to the municipal board, the Divisional Court and the Court of Appeal. All appeals were unanimously dismissed. On April 30, 1998, the Supreme Court of Canada denied the Power Workers' Union request for leave to appeal the decision of the Court of Appeal. The expansion of the service territory took effect in the town of Lincoln on July 1, 1998.

The township of West Lincoln passed their expansion bylaw 95-76 on November 6, 1995, directing West Lincoln Hydro Electric Commission to serve their entire municipality, and the bylaw was also appealed by the Power Workers' Union to the Ontario Municipal Board.

The PWU has agreed to withdraw its appeal in accordance with an agreement between the Municipal Electric Association, the Power Workers' Union and certain municipal utilities. The West Lincoln Hydro Electric Commission has agreed to be bound by the decision of the Ontario Labour Relations Board in a successor rights application that the Power Workers' Union has filed with the Ontario Labour Relations Board against Lincoln Hydro. West Lincoln Hydro has already established with Ontario Hydro that their service territory expansion will take place on June 1, 1999.

Given the ongoing litigation, Pelham Hydro Electric Commission was hesitant to present service boundary expansion to its own council. However, with a newly appointed commission in December 1997, the Pelham Hydro Electric Commission decided the time was right to consider the municipal benefits of serving the entire municipality.

The town of Pelham gave notice on May 20, 1998, to hold a public meeting pursuant to section 83.2 of Bill 185 concerning the extension of the hydro service territory. On June 22, 1998 the town of Pelham passed bylaw 2013, directing the Pelham Hydro Electric Commission to serve their entire municipality. Pelham Hydro has also become a signatory to the MEA-PWU agreement, agreeing to be bound by the Labour Relations Board decision on successor rights.

All three of the mentioned municipal councils and their respective commissions have fulfilled their obligations under the current legislative framework, albeit all are at different levels of completion. The councils have exercised their legislative right to direct their local commissions to assume control and management of the rural distribution systems within their entire municipalities, including the assumption of the residual debt associated with the electrical plant.

Bill 185 was drafted based on a 1990 working group report to the ministers of energy and municipal affairs. The bill was supported by all major stakeholders and all three legislative parties when it was passed in 1994. The bill simply was to remedy the problem of freezing hydro service territories at the time the regional acts were introduced in the late 1960s and early 1970s.

The provisions in Bill 185 solved an earlier legislative constraint in the case of these three municipalities represented before you and, in our opinion, complement the

intent of the proposed Energy Competition Act, Bill 35, to encourage economies of scale by establishing shoulder-to-shoulder utilities in the western Niagara region.

Expansions: schedule D, other amendments and repeals.

Section 28 should be revised to ensure that all of the applicable sections of Bill 185 are grandfathered or carried through to fruition for all three municipalities. Surely the date of the first reading of June 9, 1998 in paragraph (2)1 was arbitrary at best, as the Legislature was unaware of the desires of the town of Pelham to exercise its right to assume control and management of the municipal distribution system and the work already undertaken by the council and its commission.

The mandatory requirements in paragraph (2)2 for utilities to enter into a transfer agreement with Ontario Hydro, a professed competitor, are unfair and biased. In our opinion, Ontario Hydro should not be entrusted with protecting the interests of municipal hydro ratepayers when their corporate strategy is growth, not municipalization.

Lincoln Hydro's experience with obtaining a transfer agreement when there was no legislative requirement to do so has already shown how unreasonable it is to deal with Ontario Hydro. That transfer agreement puts all the liabilities on to Lincoln Hydro and allows Ontario Hydro to put all the bad debt — or accounts in arrears after 60 days — on to Lincoln Hydro, with no incentive for Ontario Hydro to collect.

The new West Lincoln Hydro transfer agreement puts even the costs of Ontario Hydro doing the final meter readings on to West Lincoln. In Lincoln, as of August 14, 1998, not all accounts have been final billed and, of the approximate 5,000 accounts, more than 500 have already proven to be grossly inaccurate. The provision of a mandatory transfer agreement should be removed so the municipal utilities have the opportunity to negotiate fair and reasonable terms with Ontario Hydro. The need to keep Ontario Hydro honest and accountable cannot be overstated.

Finally, the boundary adjustment or financial assistance which was guaranteed and relied on by all Bill 185 expanding utilities should continue over the complete five-year cycle. The financial assistance was negotiated by the affected stakeholders, and it was recognized there was a transitional need and that overall the rural rate subsidy throughout the province would be reduced. Paragraph (2)4 should be expanded to include that the company responsible for collecting and distributing the rural rate assistance also be responsible for administering the financial assistance for all Bill 185 qualifying municipal utilities.

Rationalizations, amalgamations and mergers: schedule B, the Ontario Energy Board Act, 1998.

Section 84(1) should be flexible enough to allow the three municipal distributors to obtain the appropriate licences to amalgamate their distribution systems and should be explicit to allow for two or more corporations to amalgamate.

As an example, the three municipal utilities represented here — Lincoln, Pelham and West Lincoln — collectively have about 19,000 customers, share similar customer demographics and geographical size, and are contiguous. If the scheme of the proposed bill is to encourage economics of scale, it should be clear that it is permissive.

1640

Ownership: schedule A of the Electricity Act, 1998.

Hydro ratepayers in the entire province of Ontario have already paid for the costs associated with delivering electricity and as such are the rightful owners. Local utilities should be owned by electricity customers, and be independent of local government and governed by a newly created customer, the elected board of directors. Local utilities should establish separate subsidiaries for their competitive and wires company businesses. The non-competitive businesses should operate on a non-profit basis, with rates regulated by local boards of directors within OEB guidelines.

Local wires companies should continue to pay grants in lieu of taxes to local governments but should not be required to pay any new charges or taxes.

No transfer of funds should be allowed from wires companies to competitive businesses; rather surplus revenues and deficits should remain with customer-owners.

Market dominance: As long as one company has control over 90% of the available generation in the Ontario market — I'm disappointed Mr Conway isn't here to hear this — there will be limited competition and potential market abuse. The market surveillance panels and the OEB cannot possibly affect the benefits of real competition in generation. The Market Design Committee's recommendations on the ability of the OEB to make recommendations on divestitures does not go far enough.

Seventy per cent of the costs of electricity are in generation, and through all the legislative changes being proposed in the industry it is almost incomprehensible why Ontario Hydro successor generating company Genco is staying intact.

The greatest opportunity for competition and real savings for all electricity ratepayers in the province of Ontario must be in the area of the highest costs, that is, generation. Introducing competition in retail distribution, which represents approximately 15% of the costs, pales in comparison to the benefits which could be derived from competition in generation. At the very least the bill should ensure that the status of Genco be reviewed annually and the legislation should make further unbundling of Genco easily accomplished.

Thank you, Mr Chairman and members of the committee.

The Acting Chair: Thank you very much for the presentation. We have approximately five minutes for each caucus. We'll begin with the government caucus.

Mr Gilchrist: Thank you, Mr Andrewes and Mr Alton. We appreciate your coming before us.

Again, to some extent a common theme we've heard from a number of MEUs. In fact, we were fortunate to hear from Pelham yesterday, as you're probably aware, on

their particular circumstances. You raise some similar issues in your brief. It drives the Hydro folks crazy when I say this, but let me deal with your ownership one.

As I read the bill, and no one has contradicted me, at the end of the day, how a municipality derives the names that it then appoints does not in any way prevent them from taking names that have been selected by election, much as the Prime Minister is not in any way required to take a name that Alberta presents as a senator. If Alberta chooses to derive as the only name they will forward something produced as a result of an election there, there's nothing that would prevent you doing that. However, as you are aware, most MEUs have appointed directors at present so it's more in keeping with that norm that the bill has moved forward.

I would like to explore as a general theme we've heard from all the MEUs — and you've brought it forward here again too — sort of a related point: Competition is good when it affects your suppliers but not good when it affects your retail customers. The breakup of Genco is not accompanied by a similarly eager anticipation by the MEUs that there be any kind of competition downstream. That goes hand in hand with the pricing issues.

We have heard from Pelham and others that they believe it's quite appropriate for Ontario Hydro to isolate even more debt into what could only be called stranded debt by selling assets for less than their market value and instead selling them for some artificially reduced price called book value.

In fairness to the presentation from Pelham yesterday, the gentleman was the general manager and not the chair and said he couldn't speak for the commission itself. You're in a bit different situation, so let me ask you the same question I asked him. Are you prepared to state on the record that if Hydro is required to sell at book value, or any other artificially reduced price, your commission today or any time in the future should be similarly constrained that you could never sell those assets again for anything more than book value and, if not, why not?

Mr Andrewes: First of all, Mr Gilchrist, I feel very strongly that the manner in which municipal utilities acquire assets from Ontario Hydro, that is, at book value, reflects the fact that the ratepayers within that municipality have invested substantially in those assets over the years and have paid for them. The residual debt is the remainder of their payment and when they assume the assets, they assume that residual debt, and I think that's a reasonable position.

Mr Gilchrist: But help me out here. You say that the residents in that area are Hydro customers paying Hydro a bill which is not differentiated that says, "Here is my \$40 this month and that goes just for the wire and that one pole out on my property and my odds, one-in-ten-thousand chance, that I'll need a lineman this month."

It obviously gets thrown into the same pot of money that all Hydro revenues get thrown into and Hydro then pulls from that pot to pay for all sorts of things, from nuclear plants to ice storm problems to 40% debt service. Why could any customer anywhere suggest that their bill

can be disaggregated and applied to that one transformer, the step transformer, or the pole out in front of their house?

Mr Andrewes: But we're not suggesting that at all. What we're suggesting is that the assets, when they were purchased, were entered into a ledger and that the assets are written down on an annual basis like any business person would do, and the people who have paid the cost of writing down those assets are the ratepayers.

Mr Gilchrist: But that's all Ontario Hydro customers.

Mr Andrewes: That's correct. But within our jurisdiction we are prepared to take responsibility for the written-down value of those assets which we, as Hydro customers over the years, have paid for.

Mr Gilchrist: I don't fault you for taking that perspective. If I were a buyer I would as well. But help me out here. Again, you've just said, it's a book entry. It's something done, as all businesses do. In private companies, you do it to offset income, to make allowances for future replacements.

But there's no exact science there. If a willing buyer and a willing seller then buy a car dealership, a hardware store, whatever it is, the fact that I've written down my shelves to \$1 each, if the willing buyer says, "You know, if I buy those shelves it will allow me to make an income that suggests that I could pay up to \$2 a shelf," that becomes the price that asset is worth.

If we can't approach it this way, let me ask you in the reverse.

The Acting Chair: We are going to have to move on to the third party and you may respond during the third party's turn.

Mr Alton: Can I just answer that?

Mr Gilchrist: Oh, they're desperate to respond.

Mr Alton: Can I just answer very quickly?

Ms Churley: We'll give him enough time.

Mr Alton: I'd like to start in 1906.

Mr Gilchrist: We'll use Mr Conway's time.

Mr Alton: OK. I'll try to do this as quickly as I can. In 1906, in the Power Corporation Act, when Ontario Hydro was first formed, there was this concept of power at cost. Ever since that time, everybody built into the rate of power that no matter where you bought it in the province of Ontario, it represented all of the cost, so everybody participated in paying for the costs. So it doesn't really equate to the shelf theory, in the sense that you've been paying for it ever since it was built. When they extended the line in Atikokan, or if they extended a line in Pelham or in Tintern, everybody paid for it.

In 1921, the government introduces the rural electrification act in Ontario. In 1958, the government forgives all of those particular charges. The grant in aid is forgiven; the grant in aid is not transferred from Ontario Hydro over to expanding utilities and never has been. Everybody has always paid power at cost. Now what you're suggesting is that no longer flies. What we're saying is that it has always been that way and, in our minds, there is no substantiated reason why on June 9, 1998, it all changed.

Mr Gilchrist: I'm just suggesting we don't want to leave more stranded debt than we have to.

The Acting Chair: Thank you. We're moving to the third party officially, Mr Lessard, and then we'll come back to the official opposition.

1650

Mr Lessard: I guess there is very good reason that everything changed on June 9. When I asked that question, the parliamentary assistant said, "Well, that's the date that the legislation got introduced." Of course, that's the reason everything changed.

You can tell from Mr Gilchrist's line of questioning how sympathetic the government is to your concerns. I am not entirely optimistic that you're going to see much change as a result of your presentation here today. We've heard this a number of times and you're the last person we're going to hear this from and this is the last time we're going to hear from Mr Gilchrist on this issue.

Mr Gilchrist: Oh, we have five days of clause-by-clause.

Mr Lessard: And we can be thankful for that. But if your concern isn't addressed, what is the impact? What is going to be the outcome in your area?

Mr Alton: It's not just our area. I see it as a tremendous grab in the sense that the people of the province of Ontario have always paid their rates based on power at cost. We all own it. It doesn't matter whether it's a transmission line or it's a piece of Niagara Falls. We've all owned it, we've all paid for it, we've always shared in those costs. Now all of a sudden, there is some line of demarcation; somebody decided to draw the line in the sand. All of a sudden, it's market value. I do not think it's appropriate that the government, whether at the provincial level or at the municipal level, should take the grab, because it's the ratepayers in Ontario who have always paid the finances.

I am happy that the bill was introduced on June 9 because we've seen the ability or the inability — how Ontario Hydro has been able to put it into financially dire straits. Now they did do that on our behalf. How deep they've got in is another question, but I think that we needed to stop the bleeding. It is the people of Ontario who own the hydro system. Right now, to say magically on June 9 it's all going to change and it's all going to go over to the provincial government or to the municipal governments, I can't understand the logic. I haven't seen anything here that would tell me any good reason why it should happen.

Mr Lessard: My question is, if our concerns aren't addressed, what is going to happen in your area?

Mr Alton: The rates will go up.

Mr Lessard: And who is going to end up providing the service? Is it going to be you? Is it going to be Ontario Hydro? Who is going to be in business in the end? As Mr Osborne indicated to us when he came before us, Ontario Hydro is going to aggressively pursue the retail marketing of electricity. In other questioning, it has been put in even cruder terms than that; it's either eat or be eaten.

Mr Alton: As long as the government leaves the transmission and distribution sectors together, they will cross-subsidize that as much as they can. Everybody will pay the extra on the transmission side so that they will cross-subsidize the distribution side and it will be the loss leader. All we need to do is look at the history of Ontario Hydro since their inception to know whether it's true or not. I kind of agree with Mr Conway's comment earlier. You feel like being in church.

Mr Lessard: So you don't think that rates are going to go down for your consumers?

Mr Alton: Not at all. I think rates are going up, there's no question.

Mr Conway: Mr Andrewes and Mr Alton, it's good to see you. I appreciate the detail of the Bill 185 story because I have said on other occasions I have felt rather disappointed that we weren't able to, for whatever reason, make what seemed like a good idea at the time work more quickly and more expeditiously, and you've done a thorough job of explaining that.

In the very little time left — and maybe I'll direct this to John Alton — as much as anyone, I have really been focusing on the whole business about market power and Genco and all of that, but as these hearings come to a conclusion, I think in some ways the equally big story is what's happening at Servco. We haven't paid as much attention as we probably should, because I think Servco is going to be a real story. The whole argument here is level playing fields and letting competitive pressures work.

Your story today — we had Moore township a couple of days ago in Sarnia, we've had a number of other submissions which seem, on the basis of their evidence, to make plain that what we are doing with this bill and the attendant policy is in fact to strengthen Ontario Hydro's retail capacity in the new marketplace. That's certainly an impression I get from your brief.

Mr Alton: It's correct then. You've got the right impression.

Mr Conway: Surely that's not what anybody out there in Lincoln country or in Renfrew county or in Sault Ste Marie was expecting out of this policy.

Mr Alton: No, I think they missed the target big time. The target's quite easy. There's a big, shiny building over here on the corner and for some magic reason, it was missed. All of the competition that has been introduced through Bill 35 is at the retail level, leaving Ontario Hydro totally out of the picture. Servco hasn't got the same rules and conditions placed on it as the MEUs do that we now have to comply with under the Ontario Business Corporations Act. Servco is going to be able to do whatever they want.

Mr Conway: You may have said this when I was out, and I apologize if it's repetitive, but I'd like clarification. I presume that your view is that, as a minimum, there should be a firewall of separation between the transmission and distribution aspects of Servco, and that's not there.

Mr Alton: Yes, if you're going to do it correctly, if you're going to go through the entire exercise.

Mr Conway: As a minimum, that has to happen.

Mr Alton: Yes, as a minimum, you have to do that.

Mr Conway: To put this at the highest possible level, I was saying the other day that Maurice Strong, among others at Ontario Hydro in the last number of years, as their debt-equity ratio worsened, looked covetously, these people running Ontario Hydro, at what Macdonald told us two years ago was over \$5 billion worth of unfettered assets in the distribution and transmission facilities of the MEUs.

If we've got a bill, Bill 35, that is going to set up the possibility, create an unlevel playing field to the advantage of Servco, which after this competitive marketplace becomes effective is a commercial company with only one shareholder, the Ontario government, if Servco is going to be given an unfair advantage to put its big snout into the \$5 billion worth of some part of the multi-billion dollar asset base of the MEUs and then take that out into the commercial market, that's the business I'd want to be in. That's the one where there have got to be huge opportunities for profit and gain. Would you not agree?

Mr Alton: Definitely. I think Ontario Hydro is very happy with the bill. I would think they'd have to be elated with it.

Mr Conway: I simply make the point that this bill is supposed to be about a level playing field. I think it is now agreed that, where Ontario Hydro is concerned, at Servco it is manifestly not a level playing field.

Mrs. Johns: That's not agreed.

Mr Conway: Listen, John Alton has been in this business a lot longer than I have. He's telling me that, as he reads the bill, it is an unlevel playing field. You're not alone. I thought the Moore township story was a painful story about how it could be to the considerable advantage of Ontario Hydro, because the legislation and the rules are very much in their favour, including such things as timing.

Mr Alton: Definitely. The advantage is squarely in Ontario Hydro's corner. No question.

Mr Conway: Anything else beyond the clear separation of Servco into two distinct entities? What other measures would you recommend?

Mr Alton: I found it very interesting that the panel that was here just before us, the Market Design Committee, was talking about competition and how you can mitigate it. They admit the fact that there are limited transmission facilities to introduce any more competition in here; that as long as Ontario Hydro/Genco stays together, 70% of the cost is out there, and the price is going up.

The Acting Chair: Thank you very much, Mr Alton and Mr Andrewes, for your presentation. We appreciate your coming before us.

Mrs. Johns: On a point of clarification, Mr Chair: I'd just like to ask Philip if he'd like to tell us any stories about Jim Rusk in his school days.

The Acting Chair: Maybe that can be after hours, out in the hall.

Mr Conway: Might I suggest my incredulity that they could have been in the same class.

Mr Andrewes: Indeed we were.

The Acting Chair: We've received some 91 delegations, we've received a very large number of written presentations and the committee has moved along very well over the last eight days. I believe you have a motion, Mr Lessard.

Mr Lessard: I move that the resources development committee extend an invitation to the Minister of the Environment to attend at the next meeting of the committee for one hour to make a presentation and respond to questions with respect to Bill 35.

The Acting Chair: From my understanding, the way it was originally set up that motion would be out of order for the eight days that were laid out for hearings. They might have been able to shuffle a bit if that motion had come forward earlier, and it's laid out when we come back for clause-by-clause. I rule the motion out of order.

Mr Conway: Then that probably anticipates —
Interjection.

Mr Conway: I've got another point. Trust me, I'm not going to be difficult.

My colleague Phillips and I have indicated earlier in these proceedings that we certainly wanted some opportunity to have the current chair of Ontario Hydro, Mr Farlinger, appear before these proceedings. He wasn't able to be here on day one, for reasons that were understandable; his schedule did not permit it. But I would certainly like to find a way to have Mr Farlinger come and speak to us about some issues I think are very important that only he could speak to. Is there any agreement to consider that possibility?

The Acting Chair: In both cases I think the ideas are excellent. It's unfortunate they hadn't come to us two or three days ago or last week, when we might have worked it into the schedule.

Mr Conway: In fairness, it was last week that Mr Phillips indicated his interest in having Mr Farlinger. I suppose we could have been obdurate and said, "Well, no, the invitation was extended." He's a busy man. I have no problem with his being unable to accommodate one of the days. But if we are going to, as a self-respecting Legislature, allow important public executives to tell us that their schedule was such that they couldn't fit their time into the one opportunity that was available and therefore they can avoid any appearance before the committee —

The Acting Chair: The problem I'm having with this isn't to do with who does or doesn't appear; it's to do with what was passed in the Legislature and the number of days there. If you want to take it back to the House leaders to debate and arrange something else —

Mr Conway: I'm happy to do that, because I can't imagine that we would want to conclude these hearings without the chairman of Ontario Hydro coming to give his views on matters that are very material to his current mandate and his future plans.

The Acting Chair: My understanding is that for this committee to change the rules that have been laid out for

us by the House would be very much out of order. But if you want to have the House leaders renegotiate and bring it forward, I understand that's possible.

Mrs Johns: I would just like to add that at the subcommittee it was agreed that Ontario Hydro representatives would appear before the committee, not that Mr Farlinger would. So he didn't deliberately decide that he wasn't going to show; that was a result of the subcommittee decision and not Mr Farlinger himself.

The Acting Chair: I think we should move on.

Mr Conway: World Wrestling Federation. There's nothing I like more than a transparently supine Legislature that lies down and allows itself to be tickled silly by its overly aggressive executive branch.

The Acting Chair: Order.

Mr Lessard: I understand the constraints that have been placed upon us by the resolution that was passed. We've reached the end of our opportunity to have delegations come before us. We've heard from a number of those very important concerns with respect to the environment, and I thought it would be appropriate to invite the Minister of the Environment to respond to some of those. I think we can do anything, on consent.

The Acting Chair: Not after it has been through the Legislature.

Mr Lessard: Then we can't take it to the House leaders. Is that what you're suggesting?

The Acting Chair: That's what I'm suggesting.

Mr Lessard: If you say it's not in order, we won't be able to.

Mr Baird: You need unanimous consent of the House to allow it.

Mr Lessard: Maybe we could check the consensus of the people here as to whether that's something we can bring to the House leaders.

The Acting Chair: In all fairness, I think the questions on environment were very capably answered by the parliamentary assistant.

Ms Churley: The usual line: "We've done more for the environment in three years than any government."

The Acting Chair: As humble as I am, I'm sure there was no bias by the parliamentary assistant.

If we could move on to the last item, that's the date for amendment. It has been suggested that amendments from each caucus, if Mr Conway is still listening, would be in by September 21. Would that be in order?

Mr Lessard: Do we have some estimation as to when we may be reconvening the committee?

The Acting Chair: September 28 at 1530 hours, according to the direction from the Legislature. That would be exactly a week later. There are five days set aside for clause-by-clause. So the 21st sounds in order? Agreed. Thank you.

We stand adjourned, then, until September 28 at 1530 hours. Thank you very much and have a safe trip home.

The committee adjourned at 1705.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Scan G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepcan PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Monte Kwinter (Wilson Heights L)

Mr Wayne Lessard (Windsor-Riverside ND)

Also taking part / Autres participants et participantes

Ms Marilyn Churley (Riverdale ND)

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Ms Anne Marzalik, research officer, Legislative Research Service

CONTENTS

Thursday 20 August 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson /*

| | |
|--|-------|
| Loi de 1998 sur la concurrence dans le secteur de l'énergie, projet de loi 35, <i>M. Wilson</i> | R-359 |
| Canadian Energy Efficiency Alliance..... | R-359 |
| Mr Bruce Lourie | |
| Power Workers' Union | R-363 |
| Mr John Murphy | |
| Ontario Energy Board | R-368 |
| Mr Floyd Laughren | |
| Mr Steve McCann | |
| Mr George Dominy | |
| Association of Major Power Consumers in Ontario..... | R-376 |
| Mr Lauri Gregg | |
| Mr Arthur Dickinson | |
| Association of Municipalities of Ontario..... | R-379 |
| Mr Michael Power | |
| Ms Joan King | |
| Canadian Federation of Independent Business..... | R-383 |
| Ms Judith Andrew | |
| Independent Power Producers' Society of Ontario..... | R-388 |
| Mr Al Barnstable | |
| Mr Tom Brett | |
| Ontario Clean Air Alliance..... | R-392 |
| Mr Jack Gibbons | |
| American Electric Power Resources Canada..... | R-396 |
| Mr Tom Drolet | |
| Mr Pat Hemlepp | |
| CanaGen Energy Inc | R-399 |
| Dr Robin Jeffrey | |
| Market Design Committee..... | R-403 |
| Mr Ron Daniels | |
| Mr Don Dewees | |
| Mr Michael Trebilcock | |
| Mr John Grant | |
| Lincoln, Pelham and West Lincoln Hydro Electric Commissions | R-412 |
| Mr Philip Andrewes | |
| Mr John Alton | |

1180-4378
XC13
576

Government
of Ontario

R-10



R-10

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Monday 28 September 1998

Journal des débats (Hansard)

Lundi 28 septembre 1998

Standing committee on
resources development

Comité permanent du
développement des ressources

Energy Competition Act, 1998

Loi de 1998 sur la concurrence
dans le secteur de l'énergie



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition. Pour plus de renseignements, téléphonez auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Téléphone : 416-326-5310, 326-5311, ou sans frais 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 28 September 1998

Lundi 28 septembre 1998

The committee met at 1551 in committee room 1.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts / *Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.*

The Chair (Mrs Brenda Elliott): Good afternoon, colleagues. We are gathered here for the purpose of clause-by-clause debate on Bill 35. Welcome back. You have before you a black binder and in it are all the amendments that have been presented. They are listed in order of the way the sections fall within the bill. To minimize confusion, we'll go through them as they appear in the bill. Without further ado, we'll begin right away.

Are there are questions, comments or amendments to the bill, and if so, to which section? Are there any pertaining to section 1?

Mrs Helen Johns (Huron): Can I just do a point of order before we start? I guess it's a point of process. I'm not sure where it is, but what we thought we would do — and I don't know if I need unanimous consent for this — is that I would move all the government motions. With that the parliamentary assistant to either environment, finance or energy would speak to the reason for the amendment. Do I need unanimous consent to have that happen?

The Chair: No. Maybe what would be easier is — you're going to read each one or you will read each amendment as it's introduced?

Mrs Johns: Yes, each motion as it's introduced.

The Chair: Okay. Then just flag who's going to speak. It would be helpful if you would flag whoever would be speaking to that. Does anyone have any problems with unanimous consent on that?

Mr Sean G. Conway (Renfrew North): No, I think that's a perfectly good idea. I support it. We've been away from this for a few days. It's going to take me a few minutes to get back into the groove. I'm happy to support that

request. I would certainly ask as well the indulgence of the Chair and the staff to make sure that — it's been a long time since I've done this. This is a more complicated piece of legislation. I'm just looking at some of this and thinking, where does that connect? We're going to need some help in the early going just to make sure that we get the motions properly placed and properly debated. I'm quite happy to support that.

Mrs Johns: What's going to happen is that members will move at this end of the table. Right now it's energy people and it will move between finance and environment as we need. We'll try to keep the movement as little as possible so that there's not a flow of that. But I think there'll be some information that needs to come forward. That's our intent. If I could have unanimous consent to that, that would be terrific.

Mr Conway: No problem at all.

The Chair: Do we have unanimous consent? Yes, no problem.

All right, we'll begin with section 1. Are there any comments, questions or amendments to section 1? Seeing none, then —

Mr Conway: Wait, we have —

The Chair: You're going to refer to section 1.1.

Mr Conway: Right, all right.

The Chair: Just so that everyone knows, when there's a new section — if I can explain this to everyone so we all understand, there's a Liberal motion that will be first presented for section 1.1. This is not an amendment to the piece that's already written into the bill so it would be treated by legislative staff as a new piece to the bill. We would address section 1 as it is in the bill. Then that would be separately addressed as a new part of the bill, not an amendment to section 1.

Mr Conway: My problem's going to be where these things fit in. Anyway, carry on.

The Chair: I'll try to be as clear as I can. Section 1, as written in the bill: At this point there are no written amendments presented. Is there any discussion or comment on section 1? Seeing none, shall section 1 carry? All those in favour? Opposed? It carries.

Our first amendment is on page 2 of your binder. It's a Liberal motion. It's a new section, section 1.1.

Mr Conway: I move that the bill be amended by adding the following section:

"OEB directive re public review of regulations

"1.1(1) As soon as possible after this act receives royal assent, the Ontario Energy Board shall issue a directive dealing in a comprehensive manner with public review of proposed regulations under the Electricity Act, 1998 and the Ontario Energy Board Act, 1998.

"Review mandatory

"(2) Despite anything in the Electricity Act, 1998 and the Ontario Energy Board Act, 1998, no regulation shall be made under either act unless,

"(a) the maker of the regulation has first complied with the directive; or

"(b) the board has exempted the specific regulation-making power from public review."

The point of this amendment is to reflect some of the testimony that we heard from several of the witnesses that the process be open and transparent. My colleagues and I believe that this would be a very useful addition to the legislation to support that openness and transparency.

Mrs Johns: I appreciate that there is a need, especially when we're making substantial change like this, for openness and transparency. There is no question about that. There are a number of people the government is consulting with presently and will continue to consult with as we go along. We are of course talking to the Market Design Committee, we're talking to the Minister's Electricity Transition Committee, we're talking to the Ontario Energy Board, we're talking to stakeholders. We're using each of those groups to help us to make sure that the regulations are fair, adequate.

When Mr Laughren came before us, we talked about the process. As I think all committee members will remember, at one point I asked Mr Laughren if he would like to review, for example, the stranded debt and he said, and I'm paraphrasing him here: "I have so many things going on that I have my hands full dealing with the licensing, dealing with the requirements I have now. If we want to move this through on a timely basis, I have a full load."

I would suggest to Mr Conway that what we have here is some concern over making sure that the government consults. I would like to give him every confidence that the government is consulting. We have the Market Design Committee there, for example, consulting on these things. It would be an excessive duplication if we said everything that we decided in regulations, let's say that it was approved by the Market Design Committee, then goes through the Ontario Energy Board. From that standpoint, the point's well taken that we need to do as much consultation as possible, but I'm not sure, and in fact I disagree, that this is the route we should go. I believe that we have to bring in as many people as we possibly can to make this legislation right. The government's track record on bringing people in to consult on this legislation has been somewhat of a model.

1600

Mr Conway: Now that I'm starting to get my head around, and I apologize for my lowness —

Mrs Johns: Take a little more time.

Mr John R. Baird (Nepean): It takes us a few years to get —

Mr Conway: The member makes a good point. This really complicated stuff and it's a new world into which we're entering. I spent some time since we last met reading the Shortell and Best book called *The Brass Ring*, a chapter which would be very worthwhile reviewing the story of Union Gas and the hostile takeover by Enbridge corp and what actually went on underneath the nose of Ontario government and the nose of the Ontario Energy Board. It involved some very interesting people.

That was under the old scheme. This is a new world where the hope of the consumer is that there is going to be for the first time meaningful, rigorous and transparent regulation of the players in this business. Make no mistake about it, we're going to have big, powerful sharks in the pool.

I had forgotten that Union Gas story. Some pretty impressive people were taken down pretty quickly in the past, apparently. The minister of the day was consulting, to be sure. That was all above the waterline. It was what was going on underneath the waterline. We had some pretty impressive business people in this province up to some pretty interesting activity. I think of the evidence that was tendered by the Consumers' Association and by others about the Market Design Committee. I'm not going to be able to reference all of this stuff because we just had much too quickly.

I think there is broad support for what the government wants to do here, but we've got to be as good or as reasonably good in matching the words with the music. Dr. McKeough was not exactly an innocent when it came to swimming in troubled waters. When you see what happened to McKeough and company in the Union Gas story, let me tell you, I have quite a substantial concern about what might happen once we open this up, and we're going to open this up.

I've yet to meet a minister who wasn't very well intentioned. They are all really busy people, and this is complicated. My point here, and it's a theme that's going to repeat itself throughout a number of my amendments — I don't think there's any difference of opinion about the objective; we just have to have some mechanism to be effective.

It's just not good enough. I don't care which one it is, the minister, I want a regulator. The point about a regulator now is you want to get this away from the politicians to the greatest extent possible. If you're going to have a competitive marketplace, you're going to have regulators who are going to be empowered to make some very tough, sometimes some very controversial decisions between some not very pretty people on occasion, because there are going to be very substantial corporate pressures at work here and I'm not wanting to disguise that. That's essentially the point. It's because we want there to be a reasonable amount of transparency and openness to this process.

I'm trying to think of some other examples. Union Gas is the one that comes right back at me, but there are other

was the Market Design Committee, and I think they were quoting in their second report some fellow from one of the utilities from California just talking about how difficult it was to figure out all that was going on under the water-line. This is, to say it again, complicated stuff, and the best intentions of the best minister in the world I don't think are going to be good enough to ensure that the public interest is going to be protected.

Just to use a current example — and it's in a different subject area — I wonder how many people there are in the United States, particularly in New York, who knew the New York branch of the Federal Reserve and what it was up to with long-term investment capital. I tell you, I would have been stunned to find out that these people were up to those tricks — really outrageous tricks by what it appears.

There's a lot going to be happening and I just think to protect the public we have got to be as open and as transparent as possible, and that's the purpose of this amendment and several like it. I don't think it's imposing an undue burden on the board. We are transferring. We are saying with this policy that we are transferring a very substantial amount of the regulatory burden from the cabinet office to the OEB. That's a fundamental part of this policy, and it's going to be one hell of a change in culture around here for whoever is in government. So if that's what you want, and that's apparently what we all want, then we have to empower that organization to do a very tough job in the public interest.

Mrs Johns: I take your point. There is no question that you give us a very valid history of the ineffectiveness of the Ontario Energy Board and, more important, the ineffectiveness of ministers in the past, I suppose. But I think what's important to recognize here is that what we're trying to do and what you're trying to do in this section is to get the Ontario Energy Board involved in making the regulations.

What we proposed in our vision, if you will, looking at it, was that the Ontario Energy Board would enforce the regulations. What we've had in the past is an Ontario Energy Board without teeth. You and I saw that at the select committee. We saw that in all of our Hydro meanderings together. I'm sure you've seen that. We heard at the select committee on Hydro that Hydro would go there and ask for a rate increase and when the Ontario Energy Board said it should be this, they would do whatever they wanted to do. They only had to take that under advisement. The Ontario Energy Board hasn't had teeth. What we have proposed in this particular document is that the Ontario Energy Board gets teeth.

What's important to recognize, though, is that to get these regulations we need to deal with a wide spectrum of people who can help us make the best regulations we can as we proceed forward, with very different expertise along the line. We need to have stakeholders there. We need to have generators who are going to become involved. We need to have a whole number of different people.

What's important to recognize here is that unlike some other bills, where the minister is dealing in isolation, is that the stakeholder involvement in these regulations is, in

my history in politics, incredible. They are involved in every decision that happens. I agree the Ontario Energy Board has to have teeth. I agree that the Ontario Energy Board has made mistakes in the past because they've had their hands tied. We don't intend to tie the hands of the Ontario Energy Board but we need to give them directions so they can enforce those, and that's what we're doing in the regulations.

I fundamentally disagree with them being involved in the regulations in isolation and not with the Market Design Committee and a number of different groups we have set up who have worked from the Macdonald commission forward. I disagree that the Ontario Energy Board should take over all of these. We have a vast depth of experience and industry involvement right now and I think we need to capitalize on that.

Mr Conway: I'm not arguing. I don't expect perfection. Listen, mistakes were made in the past and they'll be made again. That's not my point. My point is that we are entering a fundamentally new world. This is a world in which we are saying the market is going to decide a number of fundamental and potentially very controversial issues. That's what you've got to have if you're going to have a market-driven electricity business, surely.

The protector of the public interest in this is a regulator. It's because it's a fundamentally different business that I think we require some — in fairness to the government, the board is being empowered in ways that are beyond its normal mandate, so I accept that.

The other point that I think is important — they're already going on. Some of the most vicious fighting on this matter is going to be within the Ontario government because the interests of the Minister of Energy and the interests of the Minister of Finance, whoever they may be, in whichever government, are often going to be contradictory. They are not going to be the same interests. One of the questions I've got as a citizen is that I want somebody to arbitrate that dispute. I don't expect the regulator to solve all those problems, but I'm telling you, I have said to you before and I'll be saying it again throughout the course of these hearings, the government of Ontario, any government of Ontario, under this regime is going to find itself in some very serious conflicts of interest. If you believe in Pollyanna and the tooth fairy you will say, "Listen, it will all get resolved happily and in the public interest." I don't believe in the tooth fairy or Pollyanna. I believe in the realities of interest-based politics, and the interests of the Minister of Energy and the interests of the Minister of Finance are contradictory at key points in this process.

1610

I want somebody, hopefully the regulator, who is going to be able to produce some balance and some adjudication of those in the public interest. I don't expect perfection and I'm not here to complain about all the mistakes. A lot of the mistakes couldn't even have been imagined as mistakes at the time. I would ask you to go back, because it's very relevant, I think, and look at that union case and the issues that play there. I'll tell you, if I were a citizen

— and there were lots of citizens who got very, very concerned. The government was bombarded. We were launching inquiries — the government of Ontario I think launched three of them to try to figure out what was going on, and what was going on was pretty interesting stuff. That's under the old scheme.

Under the new scheme — again, since we last met, look at what people like Osborne and others are saying. I understand as a corporate ambition. I'm just thinking about the citizen here. Who is protecting my interests? Presumably it's going to be the regulator, so I want to give the regulator some reasonable power to deal with these issues of transparency and fairness.

Also, because we had testimony from a number of people who said, "Because this is going to be so complicated and so ongoing that you're going to have to have the ability to develop things quickly and they've got to be user-friendly," I think those reasons also support the amendment.

Anyway, that's my argument.

Mr Wayne Lessard (Windsor-Riverside): I just want to indicate my support to the amendment as well. We know that it's going to take some time for this legislation to be passed and for market power to be available in Ontario. I think that one of the things that came through loud and clear during our debate on first reading and also presentations that were made to us was that this really is just a framework for competitive energy marketing in Ontario and that a lot of the details have been left out. A lot of those details are going to be found in the regulations.

I think it's incumbent upon us to ensure that there is some public review, there is public input, there is transparency in the development of those regulations. I understand the parliamentary assistant's comments about there being a number of experts who are available to be involved in the regulation-making process, but I, like Mr Conway, have the concern of the public interest generally, the consumer's interest. Who is going to be ensuring that those regulations are passed in the interests of consumers? Those are the people who I think we need to ensure are somehow involved in this process. It is a very complicated piece of legislation.

We didn't get a whole lot of people who were just representative of the average consumer come to make presentations to our committee, and I think for the very reason that the bill is as complex as it is. In the interests of ensuring that there's some transparency, that there is public involvement in the regulation-making process and that the consumer interest is protected as well, I'm happy to support this amendment.

The Chair: Further discussion or debate?

Seeing none, I put the question: Shall the Liberal amendment to new section 1.1 on page 2 be passed? All those in favour? Opposed? It's lost.

Moving now to section 2, we have a Liberal motion to section 2(3).

Mr Conway: I move that section 2 of the bill be amended by adding the following subsection:

"Conditions to be satisfied before proclamation

"(3) Despite subsection (2), no proclamation shall be issued under any of the schedules unless the following conditions have been satisfied:

"1. The stranded debt referred to in section 79 of the Electricity Act, 1998, as set out in schedule A of the bill has been determined as if the relevant provisions were already in force, and has been made public.

"2. All details of special payments to reduce stranded debt, including amounts, payors and means of collection, have been established under section 80 of the Electricity Act, 1998 as if the relevant provisions were already in force, and have been made public.

"3. Regulations have been established under the Environmental Protection Act to impose special emission charges on fossil fuel burning generation facilities and to require detailed monitoring of emissions from those facilities.

"4. A comprehensive public education program has been conducted to help consumers make informed choices in the new deregulated electricity market."

Part of the reason this is so complicated is that you have all these things to legislative counsel in a memorandum and then they come back and it's, "Oh, yes." I have my aide-memoire up in the office, one of the ones that I marked up, so until I go back up there and get it I'll flip the seat of my you-know-what.

This for me is a critical question. I don't want to spend too precious on this subject, but the more I have thought about where we're at in this process at this critical point the more angry I get. There's a part of me now that wants to walk out of here and say, "If the Legislature doesn't care and the public of Ontario doesn't care at this point, why should I care?" and here I do want to visit upon the committee the benefit of 22½ or 23 years.

Hydro does not deserve the kind of latitude they are currently expected to get from this Legislature. I just can't believe that after all that has happened over the last number of years and decades, this Legislature, run by so many new people, is willing to play the same old game and give the same old hollow assurances from Ontario Hydro. I'm like a bird like me took for a generation and more. I would have thought that if there's one thing you people would want to do, it's to learn from the painful, transparent mistakes of people like I have made.

On stranded debt, what am I asking here in point of order? What I am asking is that this bill essentially be proclaimed until the people of Ontario, the people who represent, have at least some better picture of a credible financial calculation, that surely they are owed, before we dispose of this bill. I have to say, and I'm not looking for an excuse to be difficult, I will not sign off on this bill in the absence of additional information around stranded debt. I just won't do it. I wouldn't go to my bank and take out a mortgage for a doghouse on the basis of the information I now have with respect to stranded debt. People laugh, and they should laugh, because what amounts to is — and I'll say this now because I must — well get it out of my system — what is this Legislature being asked again? "Don't worry. Trust us. Just give us the enabling legislation. It will all be fine. Trust us."

work out." If there was ever a policy file where a Legislative Assembly in this province ought not to be its trust in those kinds of bland, imprecise assurances, surely it is this file.

1620

Steve Dorey is a very capable public servant. I think poor Steve thinks I've been picking on him lately, and I don't mean to pick on him, because he's a good guy. I reread his testimony from his appearance and I think about the purchase testimony up in Ottawa. These are seasoned public servants. First of all I'm left with what I was promised some months ago, "You'll get a clearer picture by the late summer or early fall." It's September 28 today and I have no more information now. I have this little document, *Electricity Competition: A Financial Update*. As I said before, it looks like a Mackenzie King electoral platform: It may be X and it may be Y; it's whatever. It's the Delphic Oracle. It can mean everything or it can mean nothing, and "Leave it for us to decide."

The problem with this is that we're looking at a situation where we've got a public utility that has something in the neighbourhood of \$32 billion worth of accrued debt. There is going to be a calculation. Steve Dorey was pretty good about telling us how those calculations were going to work, that there was first of all going to have to be a market valuation for the two new companies. What could they commercially carry in terms of debt? What would be left behind? Dorey tells us that what is left behind is going to be in the order of billions of dollars. For the people I represent, and I dare say for all of the people you represent, that is not an inconsequential liability.

We are doing this because we want to deal with a number of issues, not the least of which is rate. The bill says, "An Act to create jobs and protect consumers by promoting low-cost energy through competition" — to promote low-cost energy through competition. If I'm just Joe Q. Public living in Smithville or Pembroke or Barrhaven, I think that must mean they're going to do something about bringing my rates down, maybe. I hear that there's this multi-billion dollar debt. I'd want to know more than I now know about how that's going to be managed just because I would in my normal life. If I go to sign a mortgage for my home, what do I want to know? My banker wants to know some questions, but I want to know some questions too. What's the interest rate? What's the amortization period? Those would be two things I'd want to know. My banker would want to know something about my financial integrity. Why would we treat Ontario Hydro and the Ontario taxpayer any differently, particularly at this juncture?

At one level it is a contempt of the Legislature to ask that the Legislature endorse this policy with no financial information as to that stranded debt. I don't expect all of the details. Steve Dorey is right; it is complicated. Byrne Purchase told us in Ottawa: "Don't worry. Whatever number you pick, you'll get it wrong." That would put it in the mainstream of all Hydro financial matters for a long time. But that's part of the reason why we're here. Part of the reason we're here is that the publics we represent say,

"I'm like Popeye; I've had enough, and enough is too much." Now what are we asking? We're asking the Legislature, "Hold your hand firm, get the pen ready and sign a blank cheque." I'm not prepared to do that. I view that as a fundamental abdication of my responsibilities to my people and to the broader public interest.

I know it's not easy. One of the reasons I'm probably not going to favour one of the NDP amendments down the stream is that I don't think we're going to be able to manage that debt without some short-term impact on rates, and it may not be a positive impact on rates. I'm quite prepared to go back to my electors and say, "Listen, we've built this situation up over decades and we're going to have to manage it effectively, and quite frankly we may very well have to look at some things that are not very popular." I don't know what the alternatives are, because we are in a corner.

The point of the first issue is simply, number one, the stranded debt. There the intention is to say that before this bill passes, and as far as I'm concerned before we get to third reading, I believe the Legislature is owed substantially more information around what is the best estimate of those valuations for the successor companies. We've got every bloody investment banker from New York to Vancouver, apparently, working on this and they've been working at it for six months. I can imagine the bills that are flowing into the exchequer for all of their good work. I think the Legislature, since it's paying for all of this, should have the benefit of some of the analysis before it signs off on this bill. So I feel very strongly.

I thought the Consumers' Association made the case, and so did several others — I'll read the list, if you want — as to the importance of getting a better handle on the debt. I'm just absolutely not prepared to go much further on this policy without a greater understanding of those calculations and what they're going to mean both to the valuation of the successor companies and to potential rates in the transitional period particularly.

I look around the room and I see some very able public servants. I can't believe there are people in finance and energy who would expect the Legislature to buy this without that. If we're prepared to do that, we may as well go home. I don't know what the hell we're doing here. I can't believe it.

Most of you are new and fresh and a lot smarter than some of the rest of us were. Please don't make the mistakes many of us made that brought us to this point. That's the part I find stunning. There's something really revolutionary about this, that after all we've been through, some people, I suspect at Hydro, imagine that they're going to be able, in the quiet of the summer and early fall, to slip it through in a broad enabling kind of way with none of the fine print, none of the numbers, none of the details. I'm not looking for an excuse to sign off, but I will not sign on in the absence of some of those numbers.

As I indicate in point 2, one of the issues that also arises is when you look at the residual stranded debt. I've been rereading the testimony and there's some very artful language that's been used. I'm a residential or a farm

consumer. I know there's going to be some pain and I'll pay my share. I want to know that it's my share, that it's a fair share. Again, reading some of the business literature to which I made reference, it's very interesting, the stated corporate policy of some big players in this province and about the extent to which they are going to go, quite understandably, to avoid paying taxes and special charges. That's part of the dynamic of their world. I don't express any great surprise at that, but if that's what is going to animate their behaviour, I'm a small farmer down in Lincoln county or I'm a retail clerk up in Renfrew and I'm thinking, "All right, there's a multi-billion dollar debt to be paid down."

I see in this policy there is a basket of instruments, the last of which is the CTC. I understand why the CTC would be our last charge, from a theoretical point of view at least. One of the things I want to know as a residential or farm customer is, how big is the bill, how big is that stranded debt, which of the instruments are they going to apply to write down that debt and how are they going to be applied? You see, depending on which instrument you pick and how you apply it, you could affect me very differentially from my friend from Brant-Haldimand, or you could certainly affect one sector, one class of consumers over another. Because of course it's complicated, it would be very difficult to figure that out. The Market Design Committee has told us about some of the experience particularly in Britain, some of the analysis seven or eight years out. I think their second report in July talked about a study that said the British electrical consumers were still paying about \$700 million or \$800 million above what the market in fact should be providing. That's not a surprise.

1630

I'm very interested to know not just what is that stranded debt, how was it arrived at, how was it apportioned, but how are we going to write that down. What are the instruments? If you're going to make a salad, I want to know, what are the ingredients of the salad and in what proportion? I think the public has a right to that information.

We'll come back to the third and fourth points at greater length perhaps later on. There is no doubt, despite some of the Hydro propaganda of the last few weeks — I can't tell you how impressed I was by the OMA testimony, and I think everybody at Mississauga was, about the health effects of ground-level ozone, the brief we got. I know that in the short term and maybe in the intermediate term there is going to be a greater reliance on fossil fuels. Mr Osborne, at his board of trade breakfast a couple of weeks ago, adverted to the fact that they were already in that situation, for understandable reasons.

I want to know, as I indicate in paragraph 3, that the regulations have been established under the Environmental Protection Act to impose specific emission caps on fossil fuel-burning generations and to require detailed monitoring of those emissions from those facilities. I think we have a right to know. The Market Design Committee in its second report speaks to that. I'm not prepared to say, "Trust us." I think the time to do this, as we're doing with

other things, is that we're going into the market. All right. At the gate we're going to establish a number of requirements, a number of benchmarks, and I think it is reasonable in the public interest that we do that. I think we have some very powerful testimony on the third point.

Again, public information: The minister I think acknowledged it in his testimony. It is just a blizzard. To be fair to the government, I think one of the government amendments talks about voiding the contracts. I support them in that because that's a recognition of just one aspect of where a lack of clear public information confuses people. That's just one. Trust me. There will be a bagful of others that none of us has contemplated. Going into this policy there has to be some clear determination that somebody is going to be responsible for a reasonable public information program to help consumers make the informed choices that they're going to have to make if this policy is going to work in ways that we all hope it does.

Mrs Johns: I appreciate your statement. What I find interesting about it — I think we all understand how important stranded debt is. We all understand how important it is to make sure the payments aren't duplicated so we can keep the costs as reasonable as we possibly can for the people of Ontario, leading to lower prices. I think we all understand that environmental issues are very important. We've left the door open in all of this to deal with these issues.

The real crux of the issue, as I see it, is that if we follow this as you suggested, we'll get all this information together by, let's say, 2002, 2003 or 2004 if we're lucky. We'll take that information and the next day, poof, the market's open and we have chaos. What needs to happen in this marketplace is an orderly transition to move forward. What we need to do, for example, and what happens in this legislation, is that we move through with transition periods. You saw in the act where you can proclaim a section so that the Ontario Energy Board can start to license marketers.

If you say, "Nothing will happen until I'm ready to proclaim every section of this and every regulation is done," you won't be able to move through that transition period. I think that's a huge mistake in making this competitive marketplace go. We heard from a couple of companies that had dealt with it in other jurisdictions and if you wait for it all to happen — they're having great difficulties with it in Alberta. We need to move forward.

The difference between what I see and what you see, Mr Conway, is that I see government a little different from what has happened in the past. What happened in the past is that you entrenched everything in legislation. I left it there and then it was really tough to change. Now we're going to do that in this particular section and we're going to say, "This is going to be right forever and ever, by God, we're in serious trouble. We need to look at this marketplace; we need to see how it evolves; we need to see what people need to create business in this community and what's good for the customer. If you continue to do this, we're going to have every i dotted and t crossed, by God, we won't have competition in energy by 2010."

Mr Conway: If it were in fact an accurate description of my position, I think that would be a fair commentary. I respectfully submit that it is not my position. Let me just clarify a couple of points.

My primary focus here — make no mistake about it — is around the valuations and the stranded debt. According to Mr Dorey and others at finance, there will be a valuation day and once that calculation is made, two new ponies leave the barn, one called Genco and one called Servco, and they're gone. That which they leave behind, they leave behind. This is not something we're going to do in stages, on a critical financial matter with very real potential impacts on rates. My concern is that valuation, how it's made, what it means.

Remember what Purchase told us in Ottawa? I thought it was very interesting. He said, quite frankly, that we may be worrying a little more about stranded debt and we should be spending a little more time on the governance of the successor companies. You don't have to be Albert Einstein to understand what he's telling you there. There is an opportunity for some very substantial gain as a result of that initial valuation, and there's similarly a very real possibility for some substantial pain as a result of that initial valuation, the gain coming from the companies that you send on their way. If you underestimate what they can carry, you've really sent two ponies to pasture with a very great market appeal. Pain, of course, is that you've left a disproportionately high stranded debt.

You're right to think, "He's being suspicious." Why wouldn't I be, in the absence of any information? If I'm wrong — and I may be wrong — just show me some numbers. I can't believe that the committee or the Legislature doesn't want to see with some greater clarity how that calculation is going to be made and what it's going to mean in terms of the successor companies and what it's going to mean in terms of a stranded debt left behind to be paid for in whatever fashion. That's my principal concern here. If the valuation was something we were going to revisit two years down the road — but according to this legislation, we're not.

The Blair government took office, when, a year ago? One of the first things Chancellor Brown did in his first or second budget was to slap an excess profit tax on some of these birds. In the British example, as I understand it, those assets were substantially undervalued and bagfuls of money were made in the City to the benefit of certain private individuals, to the detriment of the broad British public. I hope that doesn't happen here. I don't want it to happen here.

One way that I think we can lessen the likelihood of it happening is to say, just as I would say to my banker: "That sounds like a very nice commitment you've made. Now, sir or madam, can we talk the interest rate? Is it 1%? Is it 7%? Is it 4%? Is it 5.5%? What's the valuation of the house? Is it \$140,000? Is it \$170,000?" You just wouldn't imagine signing on to one of these deals without that kind of basic material.

That's what I'm trying to get at here. I think there was very strong pattern of testimony to support that. To be

fair to the government, the government itself was saying, "Just give us some time and we'll get you that information, maybe not all of it, but we'll get you some of that information, enough to be useful and helpful."

It's September 28th. I'm a trusting fellow. I'm just looking for the information. I certainly can't make an informed judgment on a critical case, on a critical matter like this without — and I don't mean to be difficult. Some of you have been in business. I haven't, but I have negotiated a few commercial transactions, and I would never sign one in the absence of this kind of rudimentary information. I can assure you I've never dealt with numbers of this order of magnitude. I say again, it's the potential here. It's not just the stranded debt, it's the valuation. What did they do with Genco? What did they do with Servco? How much did they take away? I want to know that and I want the public to know that before this bill is passed. I think they're owed that, because it's a critical piece of the equation.

1640

Mrs Johns: A point of clarification: I want to pass it to the parliamentary assistant for finance to talk about the process. I know that Mr Conway knows this, but the difference between the England example and what's happening here in Ontario is that the assets were sold to private individuals at that time. Here, the corporations are being held by the public purse, if you will, with the shareholder being the province of Ontario and all the benefits accruing to the shareholders, the taxpayers of Ontario. It's very important not to mix up the public on that aspect. England's example is very different. We have learned from the mistakes of England, and it's important to go forward from that.

It's also important to listen to Dr Purchase. When he came to the committee he said: "I believe the legislation provides the maximum amount of security, if you like, for the customer. We can honestly say that you will only pay according to the amount of the actual stranded debt." He made a very strong case for the issue that the taxpayers, the shareholders, are all intertwined. We're paying the stranded debt today. We're paying the debt of Ontario Hydro today — maybe because of previous governments' mismanagement; that's fine. But we are paying the debt today and we will continue to pay it in the future. This bill does not add debt to the public purse or to the shareholders of Ontario.

Mr Conway: Before the parliamentary assistant weighs in, let me just quickly, because I know others want to get in on this — first of all, if I look at the board of trade speech from Mr Osborne just a couple of weeks ago, he's making it very plain. He's contemplating taking Genco and Servco, but certainly Genco — he says it clearly. I've got it in this pile of paper and I can't find the damn thing. He says he's going off to sell and swap assets in the United States, and that's not for the first time. You know what? Good for you, Ron Osborne. Before you start down that path, all I want to know is: What are we valuing those assets at on day one? I want to know that.

Yes, I don't expect the British experience to be replicated here precisely. But you, Ms Johns, who have been on Bay Street — you've told us about your experience there — would certainly understand that if there's going to be an initial valuation, which is in a sense, from our point of view, a final valuation, and then Genco proceeds down the road to start selling and swapping assets, I certainly want to know what the baseline valuation was. I want to know it for Servco as well. That's a very reasonable proposition.

To this argument that we're really just recycling debt, let me say two things. It's quite clear to me that not all taxpayers and not all consumers are similarly situated as we head into this new world order. The most vulnerable group is the largest group, because by their very definition they are individuals. A homeowner in Nepean or a cottage owner in Collingwood is not going to have the focus and the power and the resources of special interest business lobbies, for example. The history of these utilities is that that's what everybody wants to get at. You want to get at that broad rate base. It's so big. You don't have to do very much to really affect things.

Dorey says at one point in this calculation — he used the figure that one cent up or down in the price of electricity affects the stranded debt to the tune of 10 billion bucks. Am I right on that, Les?

Mr Les Horswill: Yes.

Mr Conway: That just gives you an idea of what you're talking about. This is a huge rate base. My concern is, how does the residential and farm consumer get protected, particularly in these waters that are clearly going to be shark-infested? Sharks, the last time I checked, did not have the common weal as their first and only concern.

On the debt situation, there is no question that a substantial portion of debt is currently reflected in rates, but there are billions of dollars of the Hydro debt that are not yet reflected in the rates, for reasons that the parliamentary assistant has commented upon. Some of those are downstream, costs yet to be incurred. But we have others. We've got hundreds of millions, I would guess billions, of dollars parked on a siding. You've seen me read this before. All I know is that my friend Farlinger says he's had to use the rate-setting authority of the board to take a multi-billion dollar writedown. Why? Because there's a government-imposed rate freeze. We've had in the last two or three years, what, about \$10 billion worth of writedown. I'm here to tell you that not all of that writedown is yet in your hydro bill.

I will add one final observation. The fundamental question in valuation and one of the reasons I want the valuation — and again the government has been up to some very interesting things this summer, particularly the last week of July. I don't know that you've advertised the Salomon Smith Barney RFP for Ontario Hydro Nuclear. It was a very interesting RFP. Did we ever make that public, Les? Probably not. But it's out there, a very interesting RFP.

Interjection.

Mr Conway: Don't make me think it, Helen.

Mrs Johns: Ontario Hydro entered into — they entered into any contract. How does the government Ontario advertise contracts? You know better than that.

Mr Conway: Ontario Hydro, I'm sure without any regard to the Ontario government, retained Salomon Smith Barney to put out an RFP, apparently on the whole day thing on Ontario Hydro Nuclear. They got some very interesting proposals. Guess what? Four days before the proposal was to be concluded at July 31, it was all suspended.

Now, one of the questions I have on the valuation is, what is the current state and worth of Ontario Hydro Nuclear? It is one of the fundamental questions, an easy question, as Ms Johns and I know, but I want to know. One of the reasons I want the valuation date is I want to hear the latest thinking: What do you think you've got? What's it worth? What do you think you do with it? Why did you suspend the RFP?

I don't know how you can come to any reasonable conclusion about the worth of Genco, particularly until we deal with that very basic question. We probably haven't talked enough about that in the limited time we've had. But I was really struck by the news — not offered by the government authority, but reliable nonetheless — that sometime around July 27 this summer, guess what? The proposal call is off; it is suspended.

So I want to know where we are with the valuation that tells us about the options for Ontario Hydro Nuclear. It's not an easy question, but presumably there are some answers, and I want some greater assurance on those questions before we pass the bill. To be disingenuous for a moment, I could say, make my life easy; I prove to the world that I am just hopelessly narrow, negative and nattering. Just show me. Show me the cards.

Mrs Johns: Tell us what you think is the right number.

Mr Conway: Listen, you've paid tens of millions of dollars to investment bankers to give you the number. You've paid me nothing. Well, you've paid me a few dollars for a committee. But you've got them all, according to the press. I say this very seriously. You've got an enormous concentration of financial talent at work on this. I've got to believe that you've got progress to report. I'm sufficiently contrarian to say I will not sign off on this proposition until I as a legislator and I as a taxpayer hear out what Merrill Lynch, Goldman Sachs, and Salomon Smith Barney have had to say about this. Let me tell you, Bay Street is liquid with the salivations of those who are waiting for the valuation to be pronounced so the potlatch can begin.

1650

Mr Baird: I'm very cautious to engage my colleagues because we're on page 7 of a rather large —

Mr Conway: Let me tell you, this is a very key contribution.

Mr Baird: I certainly appreciated at the outset of my remarks, I think it would not be unfair to say, his suspicion, to be charitable, of Ontario Hydro and its performance with respect to some of these issues and how we relate that to paragraph 1 with respect to the strata

debt in his amendment. Of course it's not Ontario Hydro itself that will come to these determinations; it'll be the Ministry of Finance and then the cabinet accepting that advice from the minister at the end of the day.

The other analogy, that you would want to go into extensive negotiations before you take on a mortgage or what would be new debt is quite true. Of course this is not new debt. It's existing debt and existing obligations. I won't take you out my pie chart again. But I wouldn't want anyone to be left with the false impression, which I think they may be, that this is somehow entering into a whole series of new debt or obligations. It's just to consolidate and evaluate those that are currently out.

Mr Conway: Just to comment, is it your position, because I mean to ask you again very directly, that all of last year's writedown is reflected in the rates?

The Chair: Mr Conway, Mr Baird has the floor.

Mr Baird: I listened with great respect for over an hour to your presentation. I was on to speak second, but I had no problem letting you interrupt three or four times, but I'd like to speak now too.

Obviously the valuation is not going to be an easy one. I think what Bryne Purchase said in Ottawa is probably true. There'll never be any final evaluation with which everyone will agree. I can bet you now that no matter what evaluation goes to Servo, it'll be too much, and the same will be said for Genco. I can bet whatever the CTC is, if it was so set, it would be too much. I expect consumers' groups will say whatever Genco and Servco get is too little. I suspect that'll be the case. But I guess that's the job of government, to deal with those competing interests and to try to take a balanced view after a considerable and thoughtful analysis, in this case from a good number of experts the government is getting advice from in these issues.

The idea is to get these evaluations by the fall. I think it's been moved up. The bar has been moved up by saying late summer, because I don't think that's a fair description of where it's been said those evaluations would follow. But I think we've got to be cautious that if we were to do every i and cross every t we won't have competition by the year 2010, and obviously our goal is to have competition sooner than that.

Mr Lessard: That was very interesting, listening to the debate with respect to this amendment because I think we should pay attention to the experience and wisdom Mr Conway brings to this debate. He's been around here for a long time and has seen what it has led to, where we are now, the mistakes that have been made, not only by Ontario Hydro but by previous governments as well.

Why is it that we feel the need to come in with these reforms that have been set out in Bill 35? One of the reasons we have the stranded debt that we have now is based on what the member referred to in his remarks previously, the new religion back in the 1970s with respect to nuclear power. Everybody thought that was the answer then and we know that previous governments' decisions with respect to pursuing completion of the Dar-

lington nuclear power plant is a big reason for the stranded debt we are going to end up with.

The parliamentary assistant says that part of the reason we're going ahead with this doesn't have anything to do with privatization, that the legislation is going to ensure that the province of Ontario and the people who live here are the shareholders in Genco and Servco. But the minister made it very clear when I asked him whether there were any restrictions on the privatization of Genco and Servco in the legislation. He was quite candid in saying that there weren't.

Our fear is really that that's where this government's agenda is headed, that that's where this legislation is leading us, to the privatization of the assets of Ontario Hydro. That's something that I think the public and consumers in Ontario need to be concerned about, especially if the valuation of those assets, if they do end up in private hands, is wrong and there are enormous profits made as a result of the sale of those assets.

We've heard time and time again in the submissions that have been made to this committee that the key to the success of this government's agenda, as set out in Bill 35, is dependent on the amount of the stranded debt. If it's too high or if it's too low it is going to have incredible ramifications on rates that consumers are going to have to pay, and also on the valuation of the assets and even whether there is any competition in the generation and supply of energy.

When we started down this road we were asked to take a leap of faith in passing this legislation. The reasons, the advantages in pursuing the agenda that's set out in Bill 35 are numerous. Primarily, according to the government, it is so that consumers are going to end up with lower rates. However, there is no protection for consumers in the bill whatsoever. Unless the stranded debt amount is right, then it's very likely that rates are going to increase for consumers.

My concern is that if there is going to be an increase in rates, that when the allocation of the repayment of the stranded debt is made, it's made fairly, that there are not some consumers who are going to end up being able to get a better deal than others, or finding some way of avoiding paying their fair share of the stranded debt altogether.

We've heard from people who were private generators saying: "We've never been connected with Ontario Hydro. We shouldn't have to pay any amount of the stranded debt. Leave us out of this." We had representatives of the large power consumers appear before us, saying that they wanted to be able to make their own deals with generators, that they didn't want to have to be subject to the regulations set out in Bill 35, that they should be able to buy power wherever they were able to get the best deal.

I don't even think the government is prepared to support that initiative, but that's what people are going to want to be able to do, and if you're big enough you may be able to do that, but the great majority of consumers in Ontario don't have that ability. Smaller consumers are going to end up having to pay that stranded debt and I

think it's key, it's critical that we know what that amount is.

The government is saying, "We can't be expected to cross every t and dot every i before we have this bill proclaimed." That's fine and good for them to say that. We don't need to pass this amendment. But at least, if we're not going to pass that amendment, let's see the numbers. Let's find out what the stranded debt is. Let's find out how the special payments are going to be determined and what they are. What are the regulations going to be with respect to emission caps, not only for SO₂ and CO₂, but also other toxic emissions like mercury and lead as well?

I don't think that's really too much to ask and I think the Liberal motion in this case is really a compromise, saying that either we have this information available to us before us we are expected to vote in support of this legislation or we put this amendment in.

I think it's a very reasonable request. If the government isn't prepared to accept this amendment, then at least there should be some commitment to provide us with the amount of the stranded debt and the special payments and give us some timeline as to when we can expect those amounts, because we know that those are the key to the success or failure of what's been set out in Bill 35.

1700

I have indicated that we're not going to be supporting this legislation. We don't think the government is headed in the right direction because we think it is going to lead towards privatization. Without knowing the amount of the stranded debt, we are fearful that the assets of Ontario Hydro are going to be undervalued and that they are going to be subject to being sold to the highest bidder for fire-sale prices. We don't want to see that happen.

The problem with waiting to determine how much the stranded debt is going to be and with whether the valuation of the assets is right or wrong being determined by the marketplace is that by the time we get to that point, it's going to be too late for residential and farm consumers to protect themselves from many mistakes we may have made in going through this process. I think we need to be very cautious and careful.

I'd like to see more regulation than less as we go down this road. I know that's not a philosophy that's shared by the government, but the least we can do is give this legislation the scrutiny it requires, and be cautious and ensure that the consumers of Ontario are protected, and that as to the benefits that have been set out in this bill for lower rates and an improved environment, we have the tools that will get us there. I'm not confident that without this information the intention of the government is going to be met. I think this is a reasonable amendment.

Mr Conway: Just a couple of things. I'm sorry, I apologize to my very sensitive friend from Nepean for intruding on his time. But let me ask this question: Is it the view of the government all of the writedowns, the incurred costs, have in fact been demonstrated, that all of that writedowns are reflected in the current rate structure at Ontario Hydro? Do you really believe that? I can't find anybody else who does. One of the things that gave the

Street such gas when this thing came out last year was "What are they doing dumping \$6.3 billion? They're doing it because they've got a rate freeze."

Again, I'm the first to accept some of those are total incurred costs and they shouldn't be calculated. But we've taken — I forget what the number is — a calculation of something like \$9 billion or \$10 billion. Les, do you know the number offhand? What is the writedown in the last three years? It's \$8.2 billion if you just take the last three years. So you have over \$8 billion in corporate writedowns of Hydro in the last 18 months.

I just want to know — are you still the finance minister's parliamentary assistant? — is it the view of the finance that all of the incurred costs that are in that writedown are now reflected in the rate structure? If that is the view at finance, I want to go over and hear how the view comes to that conclusion.

Mr Baird: I think with a five-year rate freeze obviously I wouldn't say that every debt would be reflected in the prices, given that they've been frozen for five years. I wouldn't suggest either that every positive aspect or every asset is reflected either. Under the legislation there are obviously pension issues which are to the benefit of consumers and are reflected in rates.

Mr Conway: I understand.

Mr Baird: So I guess it's a two-way street. That's why I would want professionals to come in and advise the government and give us a proper evaluation and ensure they take the time to get it right.

Mr Conway: You're absolutely right. That's exactly the answer I would expect you to give me and I appreciate it, because that's what I would have expected. But in being the case, we both know that there are — that's things like the valuation of that nuclear plant are critical to understanding where we're going here. Remember, Ontario Hydro, in terms of its assets, its debt, its power generation and its trouble, is primarily a nuclear power plant. It's got lots of other good assets and maybe the nuclear assets will turn out to be, as Osborne calls it, a hidden dream or something in that board of trade speech.

Mr Les Horswill: Jewel?

Mr Conway: Hidden jewel? It was a great phrase, thought, "Good for Ron."

But in the here and now people like Mrs Johns and I there a year ago and we went through it chapter and verse and I thought, "This is a bagful of trouble."

We're talking about valuation. Let's not kid ourselves. That's the bulk of the portfolio. I just would like to know what's the latest thinking on that? Just as the minister says the government are entitled to the latest, best information why isn't the Legislature entitled to the same, if not at the same time, certainly at an appropriate time? An appropriate time surely, to me, is before this bill is disposed of.

I don't want to delay this thing unduly. There are problems. I can imagine some of why the government is doing what it's doing. This is not easy. Particularly, you might ask, why am I concerned about the valuation?

One of the fundamentals we're supposed to be embracing, and I think most of us do embrace, is competence

particularly in generation. The government for its own reasons has decided to depart from very strong advice it received from people like the Macdonald commission and, to a certain extent, the Market Design Committee that said you've got to unbundle Genco in some meaningful way if you're going to get the benefits of generation. That's 70% of the cost of electricity. That's what's going to be the primary driver of sending rates downward. We didn't do that. The government chose not to do that.

Because the government chose not to do that, it leaves a problem behind for Hydro because of market power. How does Hydro resolve that? Again I come back to the speeches of Mr Osborne. He says in the speech of August 11, "Over time, we will undoubtedly swap or lease some of our assets in Ontario and acquire assets in the US Northeast."

Part of the reason this has to happen is it's now the preferred strategy over at Ontario Hydro to mitigate market power in Ontario, where according to the current numbers the market would open with Genco having 86% of the market share. Because one very important decision — we'll get to this a little bit later. This is supposed to be about competition. We're all agreed, I think. My friend here may have a slightly different nuance; I suspect not. I think everybody agrees that we want competition in generation. For whatever reason, in the white paper a year ago the government specifically ruled out that which it was told was the *sine qua non* of real competition — unbundling. Everybody who knows anything about this says that if you want competition, you've got to do that. They wouldn't allow that.

Then we go to the next best measure. According to Hydro, the next best measure is we'll sell or swap some of our assets and we'll get into the United States. That was nowhere on the horizon 18 months ago when we started this, but apparently the government is onside.

All the more reason now I want to know what Salomon Smith Barney, what Merrill Lynch, what Prudential Securities are actually saying about the valuation. Are we going to let Ontario Hydro away with the good assets and leave, directly or indirectly, the underperforming, high-debt assets? I don't know, but I'd like to see that. I suspect the valuations would help me understand that.

A last question to my friend, the parliamentary assistant for energy: Is it really the plan of the government that we're going to conclude this exercise and dispose of this bill without any of that financial information being tabled to the committee? Because if the answer to that is, "Yes, trust me," I'm going to make this next few days a lot easier than any of you ever expected. If the answer is yes to that question, I almost feel illegitimate being here, I just feel embarrassed to be here. I can just hear them laughing over at Hydro at those fools. They've done it to us again.

For the new people on the block, I'm happy to let you be duped by one of the most active corporate powers in Canada. I've been duped by that crowd before. I don't intend to be hoodwinked in daylight yet again with these kinds of issues. So the question —

Mr Peter L. Preston (Brant-Haldimand): What was the answer you needed?

Mr Conway: Is it the view of the government that we should dispose of this bill in the next few weeks without any of the valuations around Servco and Genco and the corresponding data around what the best guess is going to be on stranded debt, residual stranded debt and how that's going to be disposed of using the various instruments contemplated particularly in part IV, or whatever it is, the special charges section of the Electricity Act, sections 80 to 87, I think they are. That is an important question. It's a very helpful answer, if I could get it now.

1710

The Chair: Mrs Johns, did you wish to respond?

Mrs Johns: I want to respond, but I just don't want to be fudged in with the response; I want to have a full response. So if he just wants a yes or no, I'm not choosing to respond, but if I get to say my piece, then I'm happy to go through the process.

What's important to recognize, especially as we're dealing with this subsection here, is that we're talking about proclaiming the section and saying, "Do we proclaim all these sections now or do we wait for specific elements?" What I think is very important to recognize and what Mr Conway and probably the Liberal caucus are failing to recognize is that this is a staged transition, as I talked about before.

The commercial Genco and Servco cannot set up business and open their doors for business until such time as the evaluation day has come about and everybody knows the stranded debt, so in effect we will not be moving forward to commercialize Genco and Servco until those assets are set forward. Licensing for Genco and Servco cannot be granted until such a time as they go before the Ontario Energy Board, and the Ontario Energy Board is going to want to see those numbers. So once again, in this staged transition what is happening is that there are different proclamations happening at times and different roads available for Genco and Servco, and before Genco and Servco go down these roads, the evaluation will be out and it will be clear to everyone who speaks.

But some things have to move forward now. As we heard from the people who came before us, there is some time sensitivity to moving forward on some of these issues so some people can get ready for competition by 2000. I don't think I need to say this, but we heard this from the Municipal Electric Association, we heard this from Ontario Hydro, we heard it from new generation coming into the province, we heard it from the Ontario Energy Board. Constituents in my little town of Exeter who are rurally based would prefer us to take the time, talk to the people out there who have all the information and come back with the right number at the right time, as opposed to racing through it and coming up with this so that we can appease having it before such a date as proclamation comes in.

What's important is to get this number right and to ensure that we've consulted with a number of people. Believe me, if they tell me that the stranded debt is X or they tell Mr Conway or the stakeholder or the consumer group

what the number is, we're all going to have to have faith that it was looked at from a wide range of people who had expertise in this issue. That's why the government, the Ministry of Finance, is paying these people to look at these numbers and to come up with the right numbers. We have transitions in there that stop the companies from going forward until we all get to hear these numbers. What we disagree with fundamentally is that we cannot move forward on proclaiming this bill until such time. We have heard from almost everybody who sat here that this is a good bill, it needs to move forward, there needs to be competition in the system and it should have happened 10 years ago. We have 10 lost years of competition in the electricity sector and we should move forward.

Mr Conway: On that, I think the answer to my question is no, and I appreciate that. I guess I want to say to Ms Johns, just because you say and pray that something occur is no guarantee that it's going to occur. I think an objective observer — and we had several; they may not have been objective, but we had a number of people who are a lot more expert than I am come to the committee, for example, and say: "We think the direction for competition is right and we support it. We note, however, you're not doing some critical things that you have to do to get competition." If you want me to, I'll take you through the testimony. We had several. We had the board — and these aren't just crackpot granola-eaters. We had the Metropolitan Toronto board of trade.

Mrs Johns: But they said it was very important to move quickly and go forward.

Mr Conway: My point is this: Just because you say that you believe in something and want something to happen is no guarantee that it's going to happen. I think an objective observer here would say that there is a very real division — that's not the right word, but it'll do — a very real dichotomy between what the government says it wants and what the government is actually doing. I suspect one of the reasons the government is doing it is the people who really know know exactly what kind of a horse they're riding.

My friend over here talks about privatization. You know, there's going to be privatization in this, I guarantee you. It'll be swaps, it'll be leases, it'll be minority — Maurice Strong talked about some creative ideas for privatizing some of the assets. I've got to say, people can be opposed to this, but if people think there isn't going to be privatization, as a very given we are saying in competition we are going to give to the private sector a much greater opportunity to generate the next round of electricity. I presume we're all onside for that; I am. That's privatization; that's a fundamental change from the policy in the post-war period when Hydro put us there basically and said: "We'll do it all. We will become the monopoly generator."

I come back, though, to the basic point here, that it is just not good enough to say, "We believe in competition and we hope it happens," because I say to you, Helen, a person looking at the Market Design Committee's report at the end of June, a person who read the Macdonald

committee, would be very clear about what you have to do to get competition. The government is not doing that. The government is clearly not accepting some main advice from two of its expert panels. It's keeping Hydro together to a much greater degree than was ever contemplated three or four years ago when this process began.

I guess part of what has really got me rankled now is that I can hear the laughter at 700 University, because I said someplace along the road, this is a potential heist — it will make the British train robbers look like pikers. The boys at Hydro have got themselves into a position where it appears they are actually going to be able to do the following: Keep a big whack of Genco together — drop some of it, but none of us quite sure what; Servco — I'll tell you Servco's a story and then some — keep it together and expand it. I see at the board of trade Mr Osborne tempering his language and his analogies, but it's pretty clear. I think about that. You're sitting out there — I don't know the man, but I didn't think he was quite as carnivorous as he sounded that day here in August. But it's quite clear what the plan for Servco is. Again, if you read the Macdonald report, the one thing they weren't planning on in southern Ontario was an expanded Ontario Hydro renaissance. Apparently, we're going to get that.

Then we've got the question of the debt. One of the reasons I want to know about the debt is, are they going to pull that one off too? Are they actually going to keep the good stuff together and chuck the crap and head to the Tennessee? If they can pull that off, I'm going to tell you the century will end with a Hydro performance which even Beck at his high tide would have a hard time emulating and if this Legislature allows it to happen in the name of competition, then we will go down in some kind of history book. I'm not sure in what category.

That's why I want to know, and the reason the amendment is written as it is. I said to the legislative counsel, "What's the language to get the point? My point is, before we dispose of this I want the numbers." This is the language that those very helpful people at the legislative counsel said you have to use. There's lots of stuff that should occur. The process is well underway. I don't want to stop that. That's why my amendment particularly says, "Before you proclaim this" — and make no mistake about what I'm saying here — "the following conditions should be satisfied before proclamation, that the strategy for debt be made public."

1720

Is that such a radical idea? I can't believe there's a Tory around who thinks that's a radical idea. If this Legislature is going to be so supine, so quiescent, so passive as to say, "No, we think all is well and I'm sure they did it all right down at 700 University; we really need no worry; we've got good consultations underway," trust me, I take my experience for what it's worth and don't put my credibility and your honour on the line for that kind of guarantee. I can't imagine you want to do it give the point at which you pick up this business.

But if it is the view that the government is going to proceed with this and there's going to be no detailed information

tion on this subject, then I'm for moving this along really quickly, because the faster I get out of here the better, for you and for me. I tell you, I've been through some pretty pathetic charades but this will go down as one of the biggest and most embarrassing.

The Chair: Further discussion and comments? Seeing none, colleagues, I turn your attention to the amendment on the floor. It's on page 3. It's a Liberal amendment, subsection 2(3). All those in favour? All those opposed? The motion is lost.

Any further discussion on section 2? Seeing none, shall section 2 carry? All those in favour?

Mr Conway: Just hold on here. Everything is a nullity as far as I'm concerned. Do whatever you want. I don't really much care. We should have a little discussion, though, because we can make this really simple. I think we can shorten this to an afternoon. This debate is I think for me now much clearer.

The Chair: Let's go back to the question then. Shall section 2 carry? All those in favour? All those opposed? Section 2 carries.

We move next to section 3. There are no amendments on the table for section 3. Any discussion on section 3? Seeing none, shall section 3 carry? All those in favour? Opposed? Section 3 carries.

Moving now to schedule A, section 1, we have an amendment proposed. This is a Liberal amendment to schedule A, clause 1(c.1). Mr Conway, would you like to read that? It's on page 4.

Mr Conway: I move that section 1 of the Electricity Act, 1998, as set out in schedule A, be amended by adding the following clause:

"(c.1) to promote lower-cost electricity for all consumers."

A number of the deputants made the point that the policy commits to, as stated in the title of the bill, "An Act to create jobs and protect consumers by promoting low-cost energy through competition," but that it is not an object of the legislation per se. I thought the point was well made by a number of people that presumably one of the key reasons that we're engaged in this is the promotion of lower-cost electricity for all consumers. My colleagues and I in the Liberal Party believe that fairness and equity in this significant reform package surely must mean, and must be seen to mean, that we're going to have some clear language to promote lower-cost electricity for residential and farm consumers as well as big industrial consumers. Since here appears to be a lot of support among the delegations from whom we heard and since it's virtually a fatherhood/motherhood statement but was, I'm sure unintentionally, dropped from the purpose section of the bill, the amendment intends to correct that minor oversight and insert it.

Mr Preston: It appears there's some question whether all people will benefit. From the breakup of Union Gas and later than that the breakup of Bell telephone, you can't turn your TV on without a new, better, lower rate — "Change to this one," "Change to that one," "Change to another one" — on your telephone. You can't turn it on

literally for any more than half an hour without being hit two or three times by just as many different telephone companies. There's no reason to suspect the same thing is not going to happen here. It has happened in two big monopolies in this province already, and both the object and the hope — I think it's a hope that's got 100% success behind it — is that there are going to be lower rates for all. I don't know why we need to have this as if we were saying we're proposing this just to benefit one party. Is that what you're trying to tell us?

Mr Conway: I'm a Catholic, and my religion traditionally is one that imposes a lot of responsibility and a lot of hope on the concept of faith and prayer, so the concept of deep faith is not something to which I am constitutionally foreign. Notwithstanding my religious commitment, I have found in my daily life that sometimes faith alone is not enough to ensure that some good things happen. When one looks at the title of the bill, the language is "An Act to create jobs and protect consumers by promoting low-cost energy through competition." Given that in the title, why would we not want to put the promotion of lower-cost electricity for all consumers in the purpose clause of the bill? Surely if anything has brought us here, that has.

Mr Preston: No question, but what happens to that initial period that you say is going to happen when the rates increase? Is that going to contravene —

Mr Conway: No, I don't think that's a problem.

Mr Preston: It most certainly will be if this amendment is put in there.

Mr Conway: Again, we had a number of people, the Municipal Electrical Association and others — maybe I've got the wrong citation, but there were others, a number of people — who came before the committee and made the point that in the old Power Corporation Act, that great Bible of yesteryear, in the purpose clause of that, one of the obligations, one of the purposes, was the production of electricity at cost, and that was the religion for decades. The new religion is not power at cost but a low-cost energy dictated by the marketplace for all consumers.

1730

One of the concerns here is that a market in electricity is not necessarily going to provide equal benefits for everyone. If you remember the federation of agriculture in Sarnia, they made the point, and I think the government has responded, that you can't just let the market dictate the farm rate purely, because if you do, I'm going to tell you, they're going to be paying substantially more in north Hastings than they're going to be paying in the city of Belleville. Elsewhere in the market it's quite clear that if you allow a pure market to develop and to work, their big customers are going to be able to turn the market very much to their advantage, and small customers could be exposed in ways that are harmful to their rate structure.

It just seemed to me that setting out the purpose of the enterprise, the promotion of lower costs in electricity for all consumers, was stating an obvious fact to which I think we are all married. I can't imagine why we wouldn't want to put that in the bill.

Mr Doug Galt (Northumberland): Just in response, as I look at the amendment, I'm quite empathetic to the concern to promote lower-cost electricity for all consumers. Then I flip back to the purpose statement, 1(c) and (d), and it would have to be well explained to me to understand how that can help what's already here.

Clause (c) says "to protect the interests" — and it's "protect," not "promote" — "of consumers with respect to prices and the reliability and quality of electricity service."

Then (d) says "to promote economic efficiency in the generation, transmission and distribution of electricity."

I don't see how this can possibly add anything to what's already being said. I think it's actually being said better, although I'm empathetic to the statement they're making there; I think it's better and stronger, what's already in the purpose of the act.

Mr Conway: I think the difference is obvious. The language in my amendment, "to promote lower-cost electricity for all consumers," certainly expands on (c) and (d). The reason I offer the amendment is not only to reflect the testimony of a number of the witnesses, but the government clearly has no difficulty with the idea. Good grief. If I heard the title of the bill read once, I heard it read 20 times in the course of the exercise. The minister himself beat his breast proudly and publicly about how this was going to promote low-cost energy through competition. Why would you be reluctant to put that breast-beating language into the purpose clause, since you've accepted it for the title? If it is not acceptable for the purpose clause, then surely a fair-minded person would say we should take it out of the title.

Mr Galt: We just don't like duplication.

Mr Preston: Redundancy.

Mrs Johns: I would just like to say to Mr Conway that there's a substantial difference between "low price" and "lower price." I certainly will have lower prices compared to what I would buy because I'm not going to continue to buy the average electricity that I'm buying now. I'm going to make consumer choices and I probably will pay more to have green power in my house to be able to help my children in their future. I don't want personally in my house the lower-cost electricity. I'm going to make some consumer choice, and this bill for the first time allows me to do that. By taking into effect "to promote lower-cost electricity," you've taken away my choice to be able to pay more and have green energy. That was never the intent of the bill.

As a parent of kids in Ontario right now, I think that's a very important thing for me to be able to choose. If I choose to spend more money to get a better quality of power so that my kids are safer in Ontario in 20 years, I should be able to have that choice. I'm just maybe not as price-sensitive as you are in this particular example. I'm here for the betterment of my children in the future.

Mr Conway: That you're purer than I am I concede immediately, but I would say to the member for Huron, her purity is covered, I think quite admirably, in the seventh of the purposes: "to facilitate energy efficiency and

the use of cleaner, more environmentally benign energy sources."

Mrs Johns: I would suggest I cannot get lower-priced power if I'm going to green power, especially in the short term, because we know that wind, we know that solar, we know that all of those things are more expensive. You're closing one door to get another one, and I think you're closing the wrong door.

Mr Conway: Let me just add this: The government's all its propaganda, offers this legislation as being a legislation that is going to deliver lower-cost energy. If a parliamentary assistant hasn't been reading the minister's speeches, I'll give her my copy.

Mrs Johns: We're going to promote low-cost power.

Mr Conway: The point I'm trying to make here is that the people who have been at the vanguard of this change are the big industrial and commercial consumers of electricity, the special interest groups that the Tory government holds closest to its expansive bosom. It is absolutely clear that they are going to get a significant, real, ongoing benefit on their rates under this policy. There's no doubt about that.

The purpose of my amendment is to make sure that in the purpose clause of this bill there is a recognition of not just the big corporate friends of the Conservative government are going to get the benefits, but that all customers, residential and farm, are also going to get a commitment that this policy is going to recognize an obligation to promote lower-cost electricity for them.

There is a very real equity issue here, and it's the same concern I was getting at a moment ago with stranded debt. A lot of people out there who look at this are nervous because what they think is going to happen, and there's some evidence of this happening in other jurisdictions, is that the big boys and girls who have the resources to lay their happy little ways into government favour will get the very real discounts on their rates and avoid a fair share of the stranded debt.

Mrs Johns: You know that can't happen. Don't you us that.

Mr Conway: It absolutely can happen.

Mrs Johns: Are we living in Oz?

Mr Conway: That absolutely can happen. The Macdonald Design Committee's report of some of these other jurisdictions makes it plain how it can happen. I simply don't see the point that if we are as a group committed to providing lower-cost electricity as an objective for all ratepayers, then let's say so. Let's put it as one of eight of the purposes of the act. If you don't want to do that, then at least have the decency to strip the offensive language from the title of the bill.

Mr Preston: If my esteemed colleague thinks that "protect consumers by promoting low-cost energy through competition" is offensive, then I think you're bent. A word from that —

Mr Conway: I just want you to put it someplace where it counts.

Mr Preston: Pardon me. I've been listening ad nauseam to your dissertation, sir, and I'd like 30 seconds of my own time.

This is not a statement from a government person, this is just a statement from a person off the street: Bulk buyers, whether you buy bread, ice cream, tomato juice or what have you — I'll repeat those for you later if necessary — always get a better rate. It doesn't matter what you buy. If you're a bulk buyer you're called a wholesaler, or if you're a bulk buyer you're a quantity buyer, and you always get a better rate. I'm not saying that's what's going to happen here.

My colleague said she wants to buy higher-priced power, so you refer back to here and say, "You're protected under the purposes." But when we referred you back to the purposes, to say the consumer was protected, you dismissed it out of hand. Your statement is, "You said you were setting it out." I think you were trying to set us up.

The situation is that we have said, and the general demeanour of public purchasing has said, that by breaking up Hydro you're going to get better rates. We have it in the title, we have it in our purposes, but I think you were trying to hog-tie some people who want to buy quality power instead of quantity power, and for that reason we have to say no. That's not the way it's going to be.

Mrs Johns: Two things. Thank you very much for that.

I just wanted to draw to your attention that the MEA put out a document and they said, "We see no practical way, in a competitive environment, to ask for a guarantee of lower prices for all customers, but we do believe this should be an objective for the Electricity Act."

I would like to propose, and I'm looking for unanimous consent, to amend the purpose clause, 1(a), to read "to facilitate competition in the generation and sale of electricity and competitive prices and to facilitate a smooth transition to competition."

We think that meets some of your objectives on that side, and it certainly meets our objective that people have choice, and that they may not choose to have lower prices at the expense of our environment or something along that line. So we ask that we get unanimous consent to put this in the act. I don't know if I can do this, but that would be what I would do, and that might solve all of our concerns.

Mr Conway: I'd be happy to look at the language. I'm here to be helpful.

Mrs Johns: It's in the second line of 1(a) after "electricity," and I want to add "and competitive prices." I'm saying it can't be "lower prices," it has to be "competitive prices," because people want to make choices that aren't lower price hopefully. A number of people have come along and said that green energy will be purchased and the consumer deserves to have that ability to make a choice.

Mr Conway: Listen, I'm happy to have anything that expands this. I'm not looking for guarantees. I have no idea what this market is going to do in the next 18 to 24 months. Given the world situation today, I couldn't imag-

ine what's going to happen. I expect a big, nasty surprise. That's why I'm not going to favour guarantees. There aren't any. I would be misleading my constituents to talk about guarantees. However much I might like to do that, there is just no way I could responsibly do that.

My point here is to say we're talking about the purpose clause of the bill and language means something in some places. In effect it's window-dressing on the front page, the language "An Act to..." The purpose clause means something. It clearly sets out what the Legislature intended to be the purposes of the bill. I thought we were of a mind to say that one of the purposes of this reform legislation was to get away from those bad old days of high-cost energy that was making the province uncompetitive, all of the things I've heard from across the aisle, many of which are true. Surely the point of this was — not the only purpose. That's why I think it would be a fair complaint to say if it was the only purpose, then absolutely, but I'm saying it's one of eight purposes.

What's the language? "To promote lower-cost electricity for all consumers." That's not to say that people aren't going to be able to make choices in the marketplace, that they're not going to be able to do as Mrs Johns rightly wants to do, but just that one of the objectives of the exercise is to facilitate the promotion of lower-cost electricity, not just for some but for everybody, recognizing that lower-cost electricity for Conway at his cottage is going to be a very different proposition than it might be for a big consumer in the Chemical Valley.

Mr Preston made a very good point about bulk. If you remember the testimony of Michael Janigan from the Public Interest Advocacy Centre up in Ottawa, he took us through their analysis of the telecom legislation and what had happened. He makes the point in that presentation that big business — and it's no surprise, because Mr Preston is right — people who have the power in the marketplace do expect a volume discount. I don't want to deny them that, because the market is strictly going to provide that, but what I'm saying is we want a market where there is also some recognition that there is an obligation or at least a recognition that there be lower-cost electricity for all consumers. That's the point I'm trying to get at.

If you want to stand this down and think about some language overnight — I don't consider this very radical, I really don't. I would have thought it pretty straightforward. I don't find it exclusive of some of the other points. I'm not interested in guarantees, and I think you make a very good point, but as an objective, one of eight?

Mrs Johns: With all due respect, I think you're confusing lower prices with competitive prices. What you want to ensure is that every individual has the ability to benefit from a competitive marketplace, and that means that they have competitive prices. It is not lower prices. You've just admitted that there will be people who will not have lower prices, because of their cottage or because they choose, as I do, to have power — I really think the words you want here are "competitive prices" and I'm prepared to deal with that issue on this.

If you're prepared to consider that, I'll stand it down, but that's the only way I'll accept it. I'm just telling you now that it's "and competitive prices." We're not going to "lower-cost electricity" because some people will not get lower-cost electricity. I don't want all the decisions made by the Ontario Energy Board when they're evaluating this that they have to find lower-cost power, because I want to be able to choose different power sources. I believe that lower cost isn't the only issue.

The Chair: Mr Lessard is up. Before we go any further, though, I think as Chair I should say that the deadline for submitting amendments is past, although we're not in a highly technical section of the bill. I will say to you that I would be prepared to consider changing that deadline if amendments were in writing and submitted. But I would caution members of the committee, if we're going to consider these kinds of things, it might be much more problematic as we go through this bill and get into highly technical sessions if we have amendments being submitted on the fly, as it were, partway through. Before we go too much further down this road about possible changes to amendments, I'd add that note of caution.

Obviously, as Chair, I want to do my best to accommodate the wishes of the committee, but I think it's appropriate that we consider what you're actually suggesting here in the longer scheme of things.

Mr Lessard: Madam Chair, I appreciate your comments because if the parliamentary assistant is asking for unanimous consent, then she might as well know what my feelings are at this point before she undertakes too much work in putting something together to amend the bill.

She asked earlier on whether we were living in Oz. I have to respond by saying, how can we have a bill that in its title says "An Act to create jobs and protect consumers by promoting low-cost energy through competition" and not have any reference in the bill to promoting low-cost energy? I just think that is beyond comprehension. Certainly that should be an objective of the bill, to promote low-cost energy through competition, and if the parliamentary assistant is telling me that's not the purpose of the bill, then I would ask for unanimous consent to remove the words "low-cost energy through" from the title.

If you want to say it's "An Act to create jobs and protect consumers by promoting competition," then that's fine with me and I would support the amendment that you are choosing. But let's not mislead people by saying in the title that we're promoting low-cost energy through competition if that's not one of the objectives of the bill. Certainly the impression I've gotten from listening to the minister's remarks is that it's his intention and expectation that the consumers are going to be able to have lower-cost energy as a result of Bill 35.

Mr Preston: What you're doing over there is interchanging two words that have altogether different meanings. We have promoted up at the top low-cost-energy and you're saying that is the same as "lower-cost" and the two are not the same at all. This is low and that's lower. You cannot interchange the terms.

What you're trying to put through here is that whatever the cost is now, whether it be high or low, it must be lower. If you have to consult to find out what the terms "low" and "lower" mean, then I don't know why you entered into the debate. "Lower" is substantially different from "low." To say that because we've got it in the bill, part, we're failing to put it in the balance — "lower" is not the same.

1750

Mr Conway: Maybe there is an element here where we're trying to say, what is the government advertising? What the government is advertising seems sensible, and why would we not want to include that in the purpose clause as one of eight purposes of the bill? What is complicated about that?

I'm being very serious. I've heard the speeches; I read the literature. If I'm a citizen, I'm kind of going, "After all that we've been through, that sounds like a good idea as a purpose," just as in the old order the great commitment was "power at cost." That was a driving force behind the purpose of successive rewrites of Hydro legislation in this province.

According to the government's own public relations campaign, this is, in significant measure, about the promotion of lower-cost electricity for everybody — lower than the actual cost of Darlington, to listen to some of the speeches; lower than the costs of some of the NUGs that were developed previously; in that sense lower, but lower for everybody. Not bargain basement necessarily, but lower-cost energy, lower-cost electricity for all customers.

The clause "for all customers" is important, because the Public Interest Advocacy Centre made plain when you look at the telecommunications sector in the province, the benefits are not very uniform apparently.

The Chair: Further discussion and comments? See, none, we are about to vote on a Liberal amendment to schedule A, clause (c.1), on page 4. All those in favour? All those opposed? It is lost.

Noting the time, I don't think we'll go into the presentation of the next amendment, so we'll begin at our next session on the NDP amendment on page 5.

There is a little bit of housekeeping that I think we should refer to. We are, according to the order of the House, to sit for clause-by-clause hearings today on Wednesday of this week, then next week on Monday and Wednesday again. What is unclear is the order from the House, standing order 46 indicates, and I'll quote, "the committee shall be authorized to meet for a fifth day of clause-by-clause consideration from 9 am to 12 pm following routine proceedings until completion of clause-by-clause consideration."

I think there have been two schools of thought here, one that we would meet on the Thursday following Wednesday, which is October 8, or that we would be pushed off until the following week, which would be the week of Thanksgiving, and that's the Wednesday. What is the view of the committee with regard to when we'd meet?

Mr Conway: I meant what I said earlier. It's clear that we are going to be just ships passing in the

night. If that is the case, I think we should make it easy on ourselves and we should just simply go through this, bundle these things, get it done. I'm going to grate on your nerves, you're going to grate on mine. This isn't going to change anything. Let's do what needs to be done to meet the minimum mechanical requirements of this exercise and get out of each other's way, schedule a third reading debate and be gone because this is truly pointless.

I don't want to be as irritating as I know I am to you. There's no point. This is Parliament just all screwed up and I don't want to legitimize it. We should do the mechanical stuff as a minimum. Let's not try to make this more than it is, and just dispose of it. I'd like to do a third —

The Chair: Thursday the 8th?

Mr Conway: We should be able to get it done faster than that. We've got one day for third reading?

The Chair: That would be the last day of clause-by-clause.

Mr Conway: As far as I'm concerned, I'd want one day to sort of wrap it up.

The Chair: If needed.

Mr Conway: But there must be a third reading. We get the report and third —

Mrs Johns: In the House, not here.

Mr Conway: Yes.

The Chair: No, but this is the fifth day we are allowed here because we need it for clause-by-clause.

Mr Preston: If we need a fifth day, could we make it the following Thursday?

Mr Conway: We shouldn't need a fifth day.

Mr Preston: If we need a fifth day. Rather than having — you say we're having a meeting on October 7th, the Wednesday.

The Chair: Or we'd have to go to the Wednesday, I believe.

Mr Conway: Maybe, Helen, if you and Wayne and I — because seriously, we should not need five days for this.

Mrs Johns: Why don't we meet as a subcommittee and talk about that? We have some preferences here if we have to go to the fifth day, and maybe we can talk about

those as we go forward. I'm just worried that schedules will be booked, and we need to have the five days if we need the time.

Mr Conway: We should just —

Mrs Johns: Let's look at it realistically. Sean. We have gone through four or five amendments today out of 250, 260 or 270, maybe more than that. We have 257 and you have another 100 and something. If we continue at the same rate, we definitely will need the fifth day.

Mr Conway: There's no debate. Somebody should go and write a motion and just decide what you want to carry and get it done. Because this is —

Mrs Johns: We have to go through all the motions; that's the way the process works. Maybe none of us likes the process but that's how the process is. We have done this in every bill in this Legislature from time immemorial, so we're going to have to —

Mr Conway: No, that's not the way it used to be, and I'm just not interested because this is a charade.

Mrs Johns: Then you should talk to your House leader. Your House leader negotiated this with however many days out in the public and the balance of the time in clause-by-clause.

Mr Conway: On the assumption that there was going to be some kind of a parliamentary dialogue. There isn't going to be, so let's not make fools of ourselves. Let's just be the automatons that we're going to be and get it over with. Go to the House with a good one-day debate and go down and drop the bouquets at Hydro's door.

The Chair: I think we can accomplish both things here. You wish to be moving through this quickly. That's understood.

Mr Conway: Because there's no point.

The Chair: I also hear some requests that we finalize the date. Let's say we're going to have our fifth day on Thursday, October 8. We can book for that. If we see that there is a problem and if members want to note that to me, then perhaps we can revisit it, but at this point we'll tentatively book that.

Colleagues, we'll stand adjourned and we'll reconvene on Wednesday at 3:30.

The committee adjourned at 1757.

ERRATA

| No. | Page | Column | Line(s) | Should read: |
|-----|----------|--------|---------|---|
| R-4 | 135 | 1 | 46 | Chief Ted Roque: I just wanted to mention too, because |
| R-4 | Contents | 1 | 20 | The following should be inserted: Mr Michael McEwen |
| R-4 | Contents | 1 | 24 | Should read: Chief Ted Roque |

CONTENTS

Monday 28 September 1998

| | |
|---|-------|
| Energy Competition Act, 1998, Bill 35, <i>Mr Wilson</i> / Loi de 1998 sur la concurrence dans le secteur de l'énergie, projet de loi 35, <i>M. Wilson</i> | R-419 |
|---|-------|

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Also taking part / Autres participants et participantes

Mr Les Horswill, Assistant Deputy Minister,
Ministry of Energy, Science and Technology

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Doug Beecroft, legislative counsel

W 30N
X 13
-576

Library
of Ontario



R-11

R-11

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 30 September 1998

Journal des débats (Hansard)

Mercredi 30 septembre 1998

**Standing committee on
resources development**

Energy Competition Act, 1998

**Comité permanent du
développement des ressources**

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 30 September 1998

The committee met at 1538 in committee room 1.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts / *Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.*

The Chair (Mrs Brenda Elliott): Good afternoon, colleagues. The resources development committee is called to order for the purpose of clause-by-clause consideration of Bill 35. When we left off, we were just completing an amendment, so we'll begin today with an NDP motion for an amendment. It's on page 5 of your notes. Mr Lessard, would you like to read that into the record, please, and we'll begin.

Mr Wayne Lessard (Windsor-Riverside): I move that section 1 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by striking out "and" at the end of clause (f), striking out clause (g) and substituting the following:

"(g) to actively promote energy efficiency and the use of cleaner, more environmentally benign energy sources; and

"(h) to reduce electricity bills for all consumers."

This amendment, I think, is fairly similar to the previous Liberal amendment that has been defeated, which talks to what the objectives of the bill are as set out in its title. The title of the bill of course is An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts.

We have noted that, in the purposes clause of the part of the bill that deals with the Electricity Act, those purposes don't set out the government's intention, as set out in the title of the bill, to promote low-cost energy. I think that this was just an oversight on behalf of the drafters of the bill. In fact, the reason I say that is that the minister

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 30 septembre 1998

has been quite consistent in his remarks with respect to lower prices for energy.

I'm referring to the press release that came out on June 9. The title of the news release says, "Lower Prices, More Jobs Goal of Competitive Energy Bill," and there is a quote that is attributed to the minister in there. Minister Wilson says, "Electricity customers stand to benefit most from a competitive electricity market with greater choice, lower prices and a safe and reliable power supply."

I know that when we were last meeting, the parliamentary assistant was saying that if we put lower prices as the objective in the bill, that would make it restrictive for people who were prepared to pay higher prices for cleaner energy if they were going to be higher prices. But if that's the case, then I suggest we should take "promoting low-cost energy through competition" out of the title to the bill so it isn't misleading for people who read this legislation and expect that it's actually one of the government's intentions to have options for lower-cost energy as one of the objectives of the bill.

We have asked for some guarantee that rates are going to go down because, as I indicated, the minister has said that the objective of this bill is to provide lower-priced energy for people. We have asked for some commitment that there will in fact be lower-priced energy as a result of this legislation. Now the government doesn't want to give us that commitment. I can understand that in light of the remarks from the parliamentary assistant. Some types of energy, green energy, solar power or some other options that may be more environmentally friendly, may be more expensive. I can accept that.

However, we suspect that the cost of energy is going to go up as a result of the changes that have been set out in the Electricity Act, 1998, whether people will buy green power or not. They're going to go up for smaller consumers who won't be in the position to make the choices that large consumers will be able to make. It's going to be the small residential and farm customers of electricity who will end up paying higher prices, while those who are larger consumers will end up with the benefit of this legislation. Some people are going to profit, some people are going to end up paying more. We think we know who that's going to be and those are the people that we want to make sure are protected.

I think that putting in the purposes of the act "to reduce electricity bills for all consumers" makes good sense. If that's what the government is trying to achieve here, then

it should be set out in the bill. If they're saying they don't expect that there are going to be lower electricity bills for all consumers, then let's just say that. Just say that that's not the objective here and now and admit that, take it out of the title, and let's hope the minister doesn't keep saying it as part of his big sales pitch to convince us that Bill 35 is good for all of us.

We've also suggested a change to the section that deals with the promotion of energy efficiency and the use of cleaner, more environmentally benign energy sources. In that section we have suggested that the words "consistent with the policies of the government of Ontario" be removed because we have some serious concerns about the policy of this government with respect to environmental protection, and I think those concerns aren't just partisan in nature. They have been reflected and borne out in the environmental commissioner's most recent report that has been quite scathing with respect to the policies of environmental protection of this government.

She basically said in her report that ministers aren't paying any attention to environmental regulation. We've seen the incredible cuts that the Ministry of the Environment has sustained over the past few years. We've seen the environment ministry office in Windsor, for example. The staff there has been cut by 50% and therefore the level of service, the ability to monitor emergency spills, for example, has been greatly reduced. I believe that having the words "in a manner consistent with the policies of the government of Ontario" is really permitting the government to — well, it's redundant wording.

If the wording means that the environmental policies of this government are going to be the ones that will be used to determine environmentally benign energy and environmental protection, this is not the direction I think that we want to go. I'd rather see those words removed because I don't think they add anything to the section and in fact they take away from the section because it reflects the commitment of the government, and the commitment of the current government to protection of the environment is one that I don't think causes the environmental community any comfort whatsoever.

We've also changed the word "facilitate" to "actively promote" energy efficiency, and we think that does far more to help improve energy efficiency and a cleaner environment than the word "facilitate." I don't know what the word "facilitate" means. If the parliamentary assistant has some suggestions, I would like to hear what those are. Those are my remarks with respect to the section at this time.

Mr Doug Galt (Northumberland): [Failure of sound system] a lot of advertising in this government — at least the opposition has criticized us for some of the advertising, although the advertising carried out by this government is far less than previous governments. But aside from that little bit of a dig there, "to actively promote" really isn't saying much other than "We're going to wave the flag." The wording that was already there is "to facilitate," and it's unfortunate that you're missing the meaning of "to facilitate." As I interpret it, it's going to allow it to

happen, get rid of some of the red tape, get that kind of thing out of the way so it will flow, it can happen.

Already we're getting green energy companies showing an interest. The paper, I believe it was a week ago Monday, indicated that there's quite an interest already in the green industry to produce electricity in Ontario. They recognize what's happening with this energy competition bill and they recognize that they're now able to get into the market. Previously with the monopoly it was not possible for them to enter into the market and they were very discouraged, unless there was some pilot project where Ontario Hydro was running the particular pilot project. But now they do see a possibility of a market, as you heard from the parliamentary assistant for energy the other day. She and many other people want to be responsible for clean energy going on to that grid.

If you compare, as one of the delegations compared, the grid to a lake like Lake Ontario, you're drawing something out like a pail of water, what kind of water do you want to put back into that lake? Does it want to be clean, or do you want to put just any old water back in? The same could be said for electricity, although it's not nearly as visual, those little electrons going up and down those copper wires, as water in a lake, although when you describe it as water in a lake or gas in a pipeline, it's a little more visual and it can be seen.

1550

The present purpose section here, under "General" "Purposes," 1(g), also goes on to say, "...in a manner consistent with the policies of the government of Ontario," which is going to be consistent regardless of which party happens to be in government and which regulations are changed. You will have recognition for those other regulations that are present and the policies of the Ontario government.

It's also of interest to note, when you talk about reducing the electricity bills for all customers, that we're already seeing all kinds of interest being shown for cogeneration, as I mentioned earlier, for green power. We're also seeing major companies come in here. British Energy has been here since January. They've had an office in Toronto looking at competition in this province. American Power is here actively looking at the possibility of entering into this market.

Section (h) that you're putting in, "to reduce electricity bills for all customers": I've yet to hear of any jurisdiction where competition was brought in where the price actually went up. The price has either consistently held its own or has come down. It's my understanding that in England, if I remember the figures correctly, the residential price dropped something like 15%; commercial-industrial dropped 20%. In California, I believe it dropped almost 20%, and in Norway as it's rolling out they're more in the neighbourhood of a 25% drop.

The NDP might be very enthused if a cap was put on the price, for example, if we put a ceiling on the price. But we can see what happened when we put a ceiling on rents in Ontario. Apartments disappeared. Developers quit building apartments. We see what happens when you put a

ceiling on, particularly if you put an unrealistic ceiling on. We're coming out with competition, and to put some kind of maximum ceiling on or some kind of limit really doesn't fly; it may in the socialist viewpoint, or in your eyes it may work, but just have a look at rent control and see what a mess it made of rental accommodation in Ontario. Everybody suffered, particularly the renters, the very people you thought you were trying to help. I'd suggest the same is going to happen here if you put some kind of requirement on, if you put some kind of ceiling or some kind of cap on the amount we charge for electricity.

I certainly empathize with your thoughts to reduce electricity bills for all consumers, and that's what probably will happen. If it doesn't happen tomorrow, it's going to happen down the road. One thing you can be assured of is that the price isn't going to go up. You can also be assured that if we maintain the status quo the price will go up. Certainly your predecessor Floyd Laughren agreed with that kind of philosophy. Certainly all parties agreed that the energy competition bill is very important and it will have an effect on the price of electricity.

All in all, your motion for (h) is redundant, and I don't see in (g) that it's going to really be of any benefit to improve the bill at all.

Mr Sean G. Conway (Renfrew North): Dr Galt has stimulated me in a variety of ways. He makes the point that we should be very careful about arbitrary caps. I think he makes a good point. Back to the 1997 Ontario Hydro financial statement; let me just read from page 52, notes to the financial statements, how the board had to use its rate-setting power to write down in excess of \$6 billion worth of non-recoverable costs. Why? Because the government of Ontario decided that there would be a five-year rate freeze, 1995 to 2000. That was a political decision I think we can all understand, but it was clearly a political decision with real consequences on the financial health of Ontario Hydro, because the board told us last year they had to use, because of that political decision — they say beyond their control — let me just quote: "In 1996 the board of directors used its rate-setting authority to charge the nuclear recovery expenditures planned to be incurred over the period 1997-2000 to operations in 1996."

They go on to say how they could not recover billions of dollars worth of incurred or to-be-incurred costs because of the rate freeze imposed by the government. That's a cap. That's a cap which, in the period of this government, will set aside something like \$8 billion to \$10 billion worth of non-recoverable costs. They're not in his rates, according to Hydro. They are not going to go away, trust me. Those costs will have to be paid.

I just want the good doctor from Northumberland to be very careful when he talks about his concern about the arbitrariness of caps. He's part of a government that has imposed a very real cap on Hydro that has forced multi-billion dollar writedowns that are just parked on a siding, to be decided, to be apportioned, presumably after the year 2000, which just happens to be in the new world order of electricity competition in Ontario. I make that point.

I make a second point. I'm always struck by the witnesses who come, and I find some people make the case better than others. Do you remember Guelph Hydro? I know the Chair would know Guelph Hydro. Guelph Hydro is a pretty good group, from everything I know. On page 3 of their submission presented to us in Sarnia, on the subject of low-cost energy they say the government, that is the Ontario government, has introduced this legislation with a preamble that it is "An Act to create jobs and protect consumers by promoting low-cost energy through competition." My friend from Windsor has already referred to that.

However, "The purpose section of the act does not explicitly address low-cost energy; this is not specifically defined in the Electricity Act or the Ontario Energy Board Act," says Guelph Hydro. "It is certainly a concern to us and to our customers that the chair of Ontario Hydro, Mr Farlinger, was quoted immediately following the release of this legislation that he would not guarantee lower prices and in some respects it was a leap of faith to expect that this" — meaning lower prices — "would be achieved from restructuring. We" — Guelph Hydro — "also have some concerns that lower prices for all customers" — the purport of the current amendment — "will not be achieved through this legislation, as competition has not been effectively introduced in the area of greatest cost, namely the production of electricity — generation. Restructuring must be for the benefit of customers served by the system. If it is not, then why are we restructuring? To ensure that future decision-makers understand the purpose of this legislation, there should be specific reference, both in the purpose section of the Electricity Act and in the objectives of the Ontario Energy Board Act, to the commitment of lower-cost energy."

The member for Northumberland made a point just a moment ago, saying that with these changes it was hard to imagine how costs would go up. I've talked to people, including Guelph Hydro. They make a very good case. I'll use one example. Let's take the treatment of assets. When the Macdonald commission was advising the government, basically they advised book value as the basis for transfer, which, as I understand it, essentially is that you take whatever debt is assigned to whatever asset.

Now the talk seems to be, "Well, no, maybe it's market value." Let's say it is market value. I don't know yet what the actual government policy is, let's say, for distribution assets that might transfer from Ontario Hydro retail over to, say, Guelph Hydro or Pembroke Hydro or Cobourg Hydro. Let's say it's not book value on the basis of that transfer; let's say it is market value. Let me tell you, if it is market value, you have just created in this policy a very real pressure, a very real cause to force rates up. Why? Because if it's market value, the acquisition cost to, say, the utility will almost certainly be two or three or four times what it would be under book value. The way you deal with that, of course, if you're the utility, is to debt-finance that. Where does the utility pass on the debt-financing costs but to the ratepayer?

1600

I simply mention these two examples to my friend from Northumberland. In supporting the amendment from my friend from Windsor — I happen to think mine was a bit better, but listen, that's just my own egocentric personality — I think the member makes a very strong point. If the government is to be believed, if the government is to be taken at its word, then clearly this policy intends to promote lower-cost electricity for all consumers. Because I thought that was what the government intended, I supported that principle. Perhaps unlike my friend from Windsor, I — and maybe some others — see some very real problems in the next three to five years. Because of the rate freeze, we're going to be fine for 18 months. This rubber is going to hit the road in about 2001.

If I were a betting person, as I think I said here yesterday, I would tell people, residential and farm customers, "In the period from about 2001 to 2004, you probably are going to see some upward pressure on rates." It's the only way I can imagine that a very large debt and some other transitional issues are going to be managed. I'd be very cautious in telling anybody I knew about what we are going to be able to deliver in that early period of transition.

On the other hand, I would be very quick to say in the early going of the new marketplace I would expect that big business is going to be able, for the reasons Mr Preston advanced here Monday, to acquire some very quick and significant benefits. It's already happening. We don't know what kind of deals Ontario Hydro cut in the Chemical Valley and elsewhere in the province with big business customers, who in the 1990s said, "Listen, Hydro, you either make a deal with us or we're leaving your system," and deals were made.

The NDP — and I'm not here to pick on my poor friends from the NDP — were forced with some very real market pressures. Back in the early 1990s, Bud Wildman, who was the minister, called it pilot projects; a minister's best friend, a pilot project, a special-need circumstance. If we got a really good look at what kinds of deals have been cut, we would find that a number of very large consumers in this province, industrial consumers particularly, have been able to use their market power to get a volume discount.

The point of the member's amendment, and I will support it, is that we want to see in this legislation, particularly in the purpose clause, some language that speaks to a principle that the minister has advertised and that we all support, namely, that this bill has as one of its core principles the promotion of lower-cost electricity for all consumers.

If the language being advanced by the opposition is imprecise, is too broad-ranging, let me say to the parliamentary assistant that I will defer to her to come up with language from those wonderful people in the department. I just think we are not holding ourselves in very good stead with the broad public, whom, as the member from Windsor just said, the minister has spoken to. He has rightly said, "I want to deliver low-cost electricity to everybody."

And we sit here and say we're not prepared to put that in the purpose clause?

I stress again, lower-cost electricity for all classes of customers, because it's manifest that some classes will receive benefits that will be significant and almost immediate, where other classes of customers, particularly the large base of residential and farm consumers, may very well have to wait to a later point in the day for a lower benefit. If this policy — and I've said it before — is going to work, it has got to be seen to be working on Main Street as well as on Bay Street. I mean that.

There is a real expectation that there is a need for change; it enjoys a broad base of support. I've got to tell you, if I were just a general citizen watching this, I'd be thinking, "Surely to God, if they're doing this for any reason, one of the four principles here is the promotion of lower-cost electricity." If that's not a purpose, I don't know what the hell is.

The Chair: Further debate.

Mr Galt: I think it's interesting to note that in purpose 1, of the seven statements or subclasses, five of those seven talk about energy efficiency and prices. The first one: "to facilitate competition in the generation and sale of electricity." Competition is about getting the price down. The third one, (c): "to protect the interests of consumers with respect to prices." I'll go on to (d): "to promote economic efficiency in the generation, transmission and distribution of electricity." Then you skip (e) to (f): "to facilitate the maintenance of a financially viable electricity industry." Then you go to (g): "to facilitate energy efficiency," and the rest is environmental in that one.

Five out of the seven are talking about energy efficiency, which is about prices. It's all about giving the best price to all customers. It's all in there, said many different ways. To say it another way may be redundant with the five we already have. Certainly adding it again is a redundancy. It's said in so many different ways. I don't know how you can say it in any more ways, that all consumers are going to benefit.

No question, as was discussed the other day, if there's going to be a volume discount — the GMs or the Incos of the world are going to use a larger volume and, yes, probably their prices are going to be a little lower than the residential. That's supply and demand, and volume sales.

It's just said in so many ways in here. I don't know how you can say it in any other way and not be redundant. I see what's suggested as very redundant.

Mr Conway: But, Doug, you can't say it another way.

Mr Galt: It's said that way five times.

The Chair: Are you finished?

Mr Galt: Yes, I'm finished.

Mr Conway: A reasonable person would wonder why the near-congenital anathema on the part of the government to include in the purpose clause something as clear and as necessary, according to people like Guelph Hydro — forget me. I think the Guelph Hydro people make the case that there is a straightforward way to acknowledge in language that's clear — again, I'm quite prepared to hear from some theologian in the legal branch at the department

of energy as to why the words might be — well, words are important. I don't want to make too much of this, but if you've ever been a minister, let me tell you, these words in these places matter. I suspect that's why it's not here. The absence of this phrase in the purpose clause I would take to be premeditated. I think the member for Northumberland is doing a valiant job, but he's not dealing with the main point.

The minister has said in his speeches, the government has said in the title of this bill, that it is clearly the intention of the cabinet, the government — it's certainly the intention of the Legislature — to change electricity policy in a way that is going to "promote lower electricity prices for consumers," all classes of consumers. A reasonable person would have to wonder why we would be reluctant as a committee to include that language in the purpose clause of this bill.

The member for Northumberland takes some pain to talk about the facilitation of competition in generation. That's interesting. To provide generators, retailers with — right. I look for the simple, clean phrase that speaks to a point that I think is central. What's the phrase? You've got my attention. There it sits in the title of the bill: the protection of consumers by the promotion of low-cost energy. But it's window dressing in the title. It means nothing in the title. It can mean something in the purpose section of the bill. It is not there and I think it should be there.

If Conway's language or Lessard's language is over-reaching or imprecise, then I, for one, would be quite happy to see other language, so long as the language speaks to the point, which is the promotion of lower-cost electricity for all classes of customers.

1610

Mrs Helen Johns (Huron): We've heard from one group who talked about rate prices and capping prices, and I think it's important at the same time to put some of the other theories that we heard over the two weeks we were on committee into the record.

First of all, I want to remind the members that yesterday I proposed different wording and asked for unanimous consent, much to the Chair's chagrin I think. Of course, I didn't get unanimous consent on that, so I think we have tried to be accommodating on that issue.

Also, twice Mr Conway suggested that the title talked about promoting lower-cost power. The title is actually "low-cost" power. I have expressed my concerns from yesterday that not everyone will have low-cost power because some people have choice for the first time in the history of Ontario and they will choose to do what they believe is right when it comes to such things as their children's health and safety in the future, as was suggested by the OMA.

We heard from Encore Energy about its expectation of rights. I'm not sure if Mr Conway or I asked this question, but they said, "It is our expectation, based on experience, that competition will lead to lower prices, greater choice and new products and services. There is absolutely no doubt about that or we would not be here."

We had David McFadden from the Stakeholders' Alliance for Electricity Competition and Customer Choice who said, "I don't think there's an example in the world where prices don't go down in a competitive market."

We had the Sarnia Chamber of Commerce say, "Let's move forward so we can all enjoy lower rates."

We had Toronto Hydro, which has an article in the paper, "Toronto hydro bills may drop 20%," say to us, "It's our feeling that electricity rates should drop under this scenario and we are quite optimistic about what competition can do for the consumer."

I then asked, "Should we cap these rates?" I asked this question to a couple of people who I have quotes from. One was to Encore Energy and they said, "In California they tried to legislate the savings and at the end all they did was scare away the people who were going to come into the market to generate the long-run savings." I think that's a concern we have to consider.

Another group said, "I think the best method of dealing with prices, in order to deliver reduced prices, is to set up arrangements which introduce effective competition...if you introduce effective competition, then one group competing against another would powerfully drive down prices. I think it would be a mistake to put in a number which would cause people to focus high, rather than saying, 'Get your sleeves rolled up, and if you don't deliver a better service and a cheaper service, someone else will.'"

Those kinds of comments reflect what the government is concerned about. We believe prices will come down because we're creating a market that's driven by demand and supply, but we do not believe they will come down all around. I have stated very clearly that in my house they won't come down because I have different concerns. I'm not price-sensitive, I'm environment-sensitive. I think we have to look at that too.

I hope you understand why the government is concerned about both of your statements. As I said, we talked about competitive pricing yesterday but that wasn't where you wanted to be and I understand that. That was our offering, if you will, to try and make this a better bill.

Mr Lessard: With all due respect to Mr Galt and his comments about how some of the words that we've suggested are redundant or unnecessary, we're in the word business. We're legislators and policy-makers, and the way we implement those policies and legislation is through laws, laws that we draft here and laws that are interpreted by the people who are governed and laws that are interpreted in the courts. Words mean a great deal, as Mr Conway has indicated, especially if you're a government minister faced with strong arguments, either one way or the other, with respect to interpretation of those words.

I'm not wedded to the words that are in my suggested amendment. I indicated my support for the Liberal amendment yesterday, to promote lower-cost electricity for all consumers. If that wording isn't to the government's liking, then that can be changed as well. May I suggest, "to promote low-cost electricity for all consumers," which really reflects what's in the title of the bill.

I don't want appear to belabour this point and get hung up on one section that is at the beginning of the bill. We've got a bill that's over 170 pages long and we're only on the second page. But I think this is an important argument because it's central to the reason the government introduced this legislation, something that we all want, and that is low-cost energy. That is what the minister has been setting out as the reason for pursuing this policy, that's what's set out in the title of the bill, and I think for the government not to want that to be set out in the general purpose of the act really is a matter of credibility for this government. Why would they not want to have it in the purposes of the act if they've set it out in the title and the minister is consistent that that's what he hopes to achieve through this change in policy?

Mr Galt has asked: "When in other situations where they've introduced competition have prices ever gone up? Why would they ever go up in this scenario that we've set up?" Well, I would respond by saying why is it that the Ontario Hydro chair wouldn't assure us that prices were going to come down. He's a knowledgeable person in a position of influence who has some ability to make those judgements and he said there is just a leap of faith to expect that prices are going to go down.

In this amendment we're not asking for a cap on prices, we're not asking for a guarantee to be set out in the legislation. We have made that suggestion and it's going to come up in another amendment that we've made if we ever get there, but I don't expect that's going to be supported if we can't even agree that the purpose of the legislation is to promote low-cost energy. We're just saying that the purpose of the bill should reflect what is in the title and what the minister has said is the intention of the government.

How could costs go up? Well, Mr Conway has indicated that in his remarks and that is determining the value of the assets either by market value or by book value.

How competition is going to unfold is possibly going to have an impact on price. Mr Galt says anyplace competition has been introduced the price has gone down. With all due respect, the competition that has been introduced in other jurisdictions is not the same as the competition that's being introduced here. Time and time again we were told by the people who were presenting to our committee that as long as Ontario Hydro remains intact as an entity similar to what it has been throughout decades, there isn't going to be true competition. So if they want to hang their hat on the definition of competition leading to lower rates, then everything we've heard from the presenters saying you're not going to have it if this is pursued has just been basically discounted, hasn't been considered at all.

We've seen the impact that competition has had in the telecommunications market, for example. People who make a lot of long-distance telephone calls, businesses who rely heavily on long-distance phone services have been able to benefit a great deal, so for them competition has meant lower prices. For other people, the average residential telephone consumer who doesn't make a lot of

long-distance calls, it's meant that their rates have gone up. So that is an example of where competition has led to higher prices.

We know the cost of the generation of green power, either solar or through wind power, through bio-mass, is going to be higher than the price of power generated in other ways. That's something that's going to lead to higher prices.

Finally, the amount of the stranded debt could possibly lead to higher prices and at this point in time we have no idea of what that amount is going to be. We don't know how it's going to be calculated, and until that amount is determined we have no idea whatsoever what influence the amount of stranded debt is going to have on price, whether it's going to be higher or lower. Those are just some of the things off the top of my head that might affect what the price of energy is going to be. I think that if the government is legitimate in its intention of promoting low-cost energy, if they put it in the title, it should go in the purpose of the bill. If they're not prepared to do that, I really wonder why, and wonder why we're even here debating the clause-by-clause of this bill much further.

1620

I'd like to ask anybody who might have been involved in the drafting of this bill, and we seem to have quite a few people here today to provide a response, and we haven't heard from any of them, but if there is anybody out there who can explain to me why in the title of the bill it says "promoting low-cost energy," but in the purposes of the act section, it doesn't refer to promotion of low-cost energy. Whether this is some kind of a drafting consideration, I'd like to know that. If it's strictly a political consideration, then nobody needs to respond to it. But I'd be interested in knowing whether there's some reason other than a political policy reason or a concern that we're not going to lead to low-cost energy in Ontario, whether that's a decision that's been made as a political decision.

To me this is a fundamental question, and that's the reason I've taken the amount of time that I have. There are a number of areas that I'm concerned about in this policy and this legislation. I might as well outline them here because I want to know whether the government, after having looked at our amendments, has any interest whatsoever in considering any of them seriously. If they're not, I don't see the point of continuing to sit here with a lot of high-priced energy and environment officials when I know we could all be doing something better, if the government is not prepared to consider any of our amendments in the areas of lower-cost energy and increased environmental protection, promoting energy efficiency and protecting consumers from unscrupulous marketers.

Those are the areas that are of concern to me and, if the government doesn't share those concerns, I'd really like to know now, because I don't know whether there's much point in my continuing to make these arguments over the next number of days.

Mr Conway: Very quickly to a couple of points that have been made, and we are talking about I think a pretty fundamental dispute. I understand that if the government

doesn't want to include the language, "the promotion of lower-cost electricity rates for all consumers," then that's their decision. But there were just a couple of things that the member from Huron said that I want to quickly speak to.

I personally don't believe there should be caps either. I think you're going to have to let a reasonable market develop. I'm not here arguing for arbitrary measures. There will be a regulator to impose certain constraints and that's as we expected. But the member said that for the first time I have competition. Well, I live in a community where for decades we had a source of electricity before Ontario Hydro ever existed, or ever knew we existed. In the last couple of years, after 90 years of a local, very competitive source, what happened? Hydro slammed the door on it. They did so for a broad corporate policy that had everything to do with their court case against London and Ajax, and nothing to do with the people in Pembroke. Now they papered it over and the deal was that 15% to 20% of our electricity in the city of Pembroke comes from the old Pembroke Electric Light Co, which has its source of generation in the Black River across the interprovincial border with Quebec.

That source of electricity provided us with 15% to 18%, I think, of our electricity, at a rate much below the going rate of Ontario Hydro. But the monolith that Hydro was, for big corporate reasons, as I said, that had nothing to do with us, fixed that arrangement. They would say, "We offered an alternative." Well, it's some alternative. My concern is that we've had — I mean, there's been a lot of misunderstanding. Hydro has become quite a monolith and quite gargantuan, particularly in the nuclear age when it just pushed out mostly everybody else. I guess the problem I have with this is that I thought we were going forward with certain objectives.

One, we were going to endorse competition in generation. We understood that would mean the disaggregation of Ontario Hydro Genco. That's not happening, certainly not in the conventional or expected way, and I go back to Macdonald, a pretty good blue-ribbon panel of people who could not have been clearer. We're not doing what those learned men and women said we ought to do, and that instinct has been reinforced by the Market Design Committee. We're going to second-best measures, the ones we have talked about before.

We are going to get a stronger Servco, apparently — Ontario Hydro Retail — not just from the evidence tendered in the committee, but if you've talked to anybody in the field, it is very interesting what's been going on in the field. Mr Osborne is as good as his word.

I am increasingly nervous that while the advertisements for the policy are quite compelling, the reality of what we're doing here appears to be something else.

I heard today, and I might ask my friend from Nepean, while walking over here this afternoon that we've got a new Deputy Minister of Finance, Bryne Purchase. If that's true, I have to ask myself, was Bryne testifying to us in Ottawa three or four weeks ago while he was negotiating a contract with the Ontario public service? I am a big

Bryne Purchase fan. I think he's a hell of a smart guy. But let me tell you, if that was going on two or three weeks ago, I would expect anybody setting a job interview to be the Deputy Minister of Finance would be very guarded about what he'd have to say about this legislation. Absolutely. I know I would be. "I'm going to be empowered through this policy to make some really important decisions," one of which Lessard just mentioned.

Critical to the whole rate structure is going to be the treatment of the stranded debt. You might say, "What does he mean?" Let me use this example: I've used it before and I don't think I'm being difficult. If according to Steve Dorey — and we're talking now about rates. I was looking, just while Mr Lessard was talking. If you don't like Guelph Hydro, I think, in government, you really ought to like Hydro Mississauga. Karl Wahl, I would think, is no enemy of this government.

Remember what Wahl told us in Mississauga? I made a note of it. It's a paraphrase but I think it's pretty good; it struck me. He said, "One of our worries is that electricity rates may in the short term in fact go up." He cited a lot of the same evidence. But let's come back to a very important one, about stranded debt.

If we're thinking about rates, Mr Galt said, "They can't really go up under this policy." I can think of another way they could go up. If I am looking at a multi-billion dollar stranded debt, and we are going to be looking at that, according to Steve Dorey — if we're all wrong on that then I will sleep very comfortably and I'd like to see the Social Credit economist that has got us there, but they might be able to do it — if there is evidence on the record someplace.

If you have got a multi-billion dollar stranded debt, the interest of finance, I can tell you, is going to be to get it out of there as fast as possible, to write it down as quickly as possible. If you're going to do that, you've got to take it out of the rates. The quicker the write-down period, I would think, the greater the pressure on rates. If I'm a ratepayer, and quite frankly if I'm the Minister of Energy and I'm a politician I'm probably saying, "You know what, my instinct would be that we should stretch that retirement period over a longer, rather than a shorter period," because my common sense would tell me that I'm probably going to have a less significant impact on rates.

1630

That's one of the reasons why for us as a committee, apparently bright, public-spirited individuals, to allow this bill to be disposed of without some clarity around that — somebody mentioned a moment ago what we heard in Sarnia. Do you remember what people like TransAlta said about that question when we were in Sarnia? Some pretty important business people said, "We want to see that, we want it to be clear and we want it to be public," paraphrasing again. And I know why. Now you're going to wave another clipping.

My point is that if you're looking at the basic point here, lower-cost electricity for customers, we've got some enormously significant policy decisions that we have no answers for. I don't expect maybe all the answers to all

the questions, but I've got to tell you that a blank sheet is not very helpful. I suspect what the government is trying to do is ride that — it's like that old Bengough cartoon of John A. Macdonald with feet on two horses. You're desperately trying to have it both ways. I can understand why. You've got very significant policy decisions to make, the answers to which certainly have not been made public.

I think the obligation of the Legislature is to say, "What are those answers going to be, and how are they going to impact on rates?" We focus on this particular item because it is a central question around the rate structure. We're doing this presumably because we want to promote the possibility of lower-cost electricity to all classes of electricity ratepayers. That's my concern.

Mrs Johns: I just want to add — I'm not sure whether Mr Conway or Mr Lessard has had a chance to see their faxes today — that the government has announced today to all of us through a fax that they're going to discuss the Ontario Hydro financial restructuring and asset valuation with all of us on October 26 in room 163 of this building.

Mr Conway: I got the fax and I certainly appreciate that. Where does that fit in terms of the — my point is that one of the things I think we've all benefited from in this exercise is this is very complicated stuff. I would rate it the most complicated policy and legislation I have ever seen here. It is really difficult and it is occupying the attention of a lot of very bright people in accounting firms, investment banking firms and law firms. I am really struck, in my travels, by just how many high-priced, professional people are seized of this question. It's been that way in the United States and elsewhere.

One of the reasons, I say to Ms Johns and the committee, that I want some transparency, and one of the reasons for my amendment yesterday that there be no proclamation until we have some greater understanding, is that I want not just the committee but the public, particularly the informed public on this dossier, to have a look before the bill is passed, just as I would fully expect — I can't believe the cabinet. I think no cabinet would be irresponsible enough to say, "We'll pass the bill, and tell us about it later." The cabinet certainly will want to know, and is right to want to know, these answers. I think, given the gravity of this question, the importance of the financial and related questions, we owe it to the broad public to say, "Here is where we are."

I was just reading Karl Wahl's testimony and he makes the point again about these nuclear assets. I don't mean to be repeating myself. I'm very interested to go to the October 26 briefing, but I can tell you that if it is the intention of the government to have this bill passed and then offer me a briefing, I want to be very clear: If I did that to you people as a minister, I would expect you to walk out of the room, because you would be right in saying that is a contempt of your rights, privileges and duties as members of the Legislature, a gross contempt. I will certainly view it as something similar. If I am expected to pass this bill and then go to a briefing, then that would represent for me the greatest Hydro hoodwink of a quarter-century, and I, for one, won't participate in it.

Mr Lessard: I got the note about October 26 as well. I thought maybe it was a transcribing error, because October 26 is a long time from now. By that time, as a result of the resolution that binds us and the amount of that we can spend on clause-by-clause consideration, that time period will have long gone by and this bill will be back in the Legislature for consideration on third reading and probably passage. I'd like to know, if we're going to have this briefing on October 26, whether the minister is making the commitment that this legislation isn't going to be called for third reading debate before that time. I'd like to know whether the parliamentary assistant has a response for that.

Mrs Johns: It is our intent to give the best estimate of the stranded debt number and the residual stranded debt number on the 26th, and it is our intent at this point to have third reading after that number comes out.

Mr Conway: That's helpful.

The Chair: Further questions and comments on this amendment? Seeing none, I put the question.

Shall the NDP amendment, which we see on page 5 and just discussed, carry? All those in favour? Opposed? The amendment is lost.

Any further discussion or comments on section 1, schedule A?

Shall section 1 of schedule A carry? All those in favour? Opposed? It carries.

Moving now to schedule A, section 2, we have a government amendment. It's on page 6.

Mrs Johns: I move that the definitions of "integrated power system" and "market participant" in subsection 2(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"'integrated power system' means the IMO-controlled grid and the structures, equipment and other things that connect the IMO-controlled grid with transmission systems and distribution systems in Ontario and transmission systems outside Ontario" — and then there is a little French blurb there;

"'market participant' means a person who is authorized by the market rules to participate in the IMO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IMO-controlled grid."

What we're doing here is addressing some issues that have come up as a result of discussions with the Market Design Committee and the IMO. When we went to the central marketing office, I think we all were struck by what an important job they were going to have in the future to ensure reliability and safety. They have asked that the integrated power system be expanded to ensure that there is no question about who will be involved in the system and about who the market participants are. We have done this to take away some of the questions that were being asked and, as I say, it has been requested by the IMO themselves and the Market Design Committee.

One of the things with the market participants that we were particularly concerned about was that the MDC suggested that we may need to use bilateral contracts as a market power constraint. We wanted to ensure that people

who were entering into bilateral contracts were considered to be market participants.

1640

The Chair: Further questions or comments? I'll formally put the question, then, seeing no further questions or comments.

Shall the amendment to subsection 2(1) carry? All those in favour? Opposed? It's carried.

The next amendment is a government amendment on page 7.

Mrs Johns: I move that subsection 2(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by inserting at the beginning "Subject to the regulations."

What we're concerned about here and what we heard about is that in the transition period there may be a problem with bills and other issues where they talk about Ontario Hydro as opposed to Genco and Servco, so we wanted to have a smooth transition. That's why that section has been set up.

Mr Conway: Why would we quibble over one more regulation? In anything this complicated, there has to be a regulatory power, but again, as someone who's been around a while, one of the things I'm increasingly struck by is what the Legislature is asked to do, whether it's Bill 26, whether it's Bill 35. If I'm in the executive branch of government, it is to have died and gone to heaven. You have a three-day sitting of the Legislature and ask for a sweeping omnibus bill to deal with everything from the setting of the sun to the falling of the winter snows. "We'll see you again in four years and you'll have some kind of a plebiscite on whether you thought we managed it well." It's all one massive transfer or increase in executive power.

I don't know that anybody cares about that any more. The level of political science and literacy around the place seems to be diminishing as we speak. I don't mean that just as a criticism of current — because the fashion is: "We won the election. We get to run the place for four years and we'll talk about it. Let's."

This bill is noteworthy for the incredible amount of regulatory power. Why would I quarrel about one more? I haven't added them all up but they run to several hundreds. I say this, and let me just make it quick. There's a great debate led particularly by my friends on the right wing that, "You know, the real problem is that there are too many politicians running around and they've got too much to say and not enough to do." So what do we do? We get rid of some of them, get rid of as many as possible, and part of that I understand.

But the real evil in our system, if you look at the political science, is that we have an executive or cabinet dominance that is perverse. It is just absolutely perverse, certainly by British benchmarks and by the benchmarks of some of our other Commonwealth friends. We have managed both federally and provincially in this country to have taken executive cabinet power to the absolute Olympian heights. How do we do that? You have weak legislatures and strong cabinets. How do you get strong

cabinets? You pass bills like this. Power to the people be damned. Power to the cabinet.

If you wonder why I'm a bit ornery about some of this stuff, I thought the current argument was around less power to government and more power to the people. How do you empower the people? You give them reasonable information; you give them reasonable transparency. So I'm not going to fight over this one. It's a chance for me to make a little speech about the incredible executive power this bill visits upon a cabinet.

I know Mrs Johns is a bit frustrated: "He must know that I'm a good, well-intentioned person." Everything I do know suggests that. But how do I know how you or some successor is going to exercise these powers? Let me tell you some very dramatic things have been done under the guise of pretty innocuous powers in statutes and in the regulations. I think there is just so much at play here.

The regulations: The conflicts of interest that I've talked to you about before, with the Minister of Finance — as a democrat, I'm a bit troubled by that because a lot of this stuff I'm never going to see.

Laughter.

Mr Conway: Well, my friend laughs over here, your trusted ally. He laughs. I guess it's Mr Galt's hour. Go and read today's New York Times and read yesterday's New York Times. There's a front-page story in both editions called the "Influence Industry." You should just pedal your hot little feet down to the library and do me a favour and read that, and you might all read it. This is a \$10-billion industry. Let me tell you the influence peddlers are at work, they're at work big time, and they work happiest when they've got this kind of opportunity. We are giving them a tremendous field day here. At the end of the day we'll be judged by how it all works out and I will be interested. I simply note with some concern that we've got regulations coming out of our ears and that means only one thing: a lot of basically private executive power around a lot of very important, though very complicated, questions.

Mrs Johns: I hesitate to wade into this debate, but I think it must be said that we're dealing with an incredible bill here. It's moving us from a system that we've known for a hundred years, a monopolistic system that has not worked well, to introducing competition into a system. There is no question that this process has to be seamless. This legislation itself is going to create jobs and investment in Ontario and it's going to affect people in the energy they produce, it's going to affect people in their businesses, it's going to affect people in every walk of their life. We have to do what we can to ensure that this system is seamless, that we move forward and that the people of Ontario get what they deserve, which is a good energy system, which they do not have right now.

Yes, there are regulations in this bill, because this is something that hasn't been done before. We can't possibly imagine all the issues we're going to come in touch with. If we chose at this time to go to legislation with every issue or in this particular case to look at every bill that might have the name "Ontario Hydro" in it that will then

become the Ontario Financial Corp, and should have become Genco or Servco, we're going to spend a lot of time in paperwork. I personally don't see in this particular section how anyone could object. I understand that Mr Conway is not objecting, but you would have to be a fortune teller, a soothsayer, to say how everything is going to proceed on this. If we can't have the flexibility to use the mammoth number of consulting people, the mammoth number of stakeholders who are involved in this today, the Market Design Committee and the Ontario Energy Board, to help us move forward in this process, we could never get this legislation done.

As much as I understand your concern about regulations, in this practical world where we're moving forward to do what's best for the people of Ontario — because we're losing businesses, we're losing jobs, we're losing our competitive cost of electricity — we have to have some regulations to move forward.

The Chair: Further questions and comments? Seeing none, I put the question.

Shall this amendment to schedule A, subsection 2(3), carry?

All those in favour? Opposed? Carried.

Any further questions and comments on this section?

Shall section 2 of schedule A, as amended, carry?

All those in favour? Opposed? Carried.

We're moving now to a new section. There is a government amendment.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following section:

"Public Utilities Act

"2.1 This act applies despite the Public Utilities Act."

What's happening here is as a result of Carl Kropp, from Ottawa Hydro, who came to speak to us when we were in Ottawa. He had a grave concern about how the process was going to evolve in the transition period. We felt this was clear in the previous act — it was in section 148 — but we have moved that forward so people will understand that this act applies despite the Public Utilities Act.

The Chair: Further questions and comments? No.

Shall this amendment carry?

All those in favour? Opposed? Carried.

The next one is a Liberal amendment on page 9.

1650

Mr Conway: This basically reflects an instinct I've had about some of this stuff over many years and the testimony of Andy Frame, who you will recall spoke to us at Queen's Park. Andy has been around the business both in terms of the private sector, the MEUs, and for many years as a senior policy analyst to the Ontario Ministry of Energy.

It's really interesting talking to people who've been around. Most of us accept our share of blame for mistakes, oversights and the like. It's just astonishing then to listen to these people as they look at the current environment. I don't want to embarrass any of the old boys and girls, but it is certainly the view of many that it would be a useful

thing — and it's my view as well that there are probably few policies that are going to be more important in terms of the economic and social well-being and, I suspect, the political day-to-day lives of MPPs and ministers over the next five years, than in the rollout of this policy.

It seems to me that the idea of some kind of legislative interest and oversight of some of this activity might not be a bad way for people who are paid by the taxpayers to hold governments to account for what they're up to, and important emanations of government, that this would be perhaps a mechanism to do that. It's in that spirit that I move the amendment, but to accept it you'd have to believe there was a meaningful role for the Legislature. I don't really want to say much more.

The Chair: Further questions or comments?

Mrs Johns: I think we all know that we could set up a standing committee with any government at any time if we thought the need existed. In this past year I guess we've set up what's called a select committee, which I see as somewhat similar, although not consistently, that would allow people to delve into issues if they felt things had gone awry. In fact, this government has done that as a result of NAO, which happened in the past year or two. I think we had a frustrating experience, but I think it was good to uncover a lot of the information. I think some of us feel the wiser for being on it.

The difference, I think, between what the government believes and what Mr Conway and I think Mr Lessard believe — because he had something very similar to that as a motion also — is that they believe the Legislature should be charged with a specific committee that deals with Ontario Hydro every time. The government believes that we have charged some people with dealing with Ontario Hydro and the whole sector over a long period of time. In fact, we believe we're the first people who have given the Ontario Energy Board any teeth whatsoever to deal with the issues of electricity. We believe that the Ontario Energy Board is there to monitor this and will have expertise that legislators certainly cannot have. I consider myself a generalist, if you will. I hope I'm at least that. We believe that the Ontario Energy Board is there to do that.

As they issue reports, any of us of course will see those reports and understand the difficulties. The Ontario Energy Board I'm sure will be meeting with the minister, and if they see certain issues that are of concern, then of course the minister at any time could call a select committee, or any government, as they chose what the standing committees would be, could choose to put this standing committee in.

I think we have to give the system some time to work. Right now we have the system being monitored not only by the Ontario Energy Board but by the IMO. Before the system gets started, we also have the Market Design Committee and the electricity transition committee monitoring it. So we believe we have a lot of people who are very specialized in nature who have a great deal of expertise in monitoring the system, both in the short term and the long term, for the betterment of the people of Ontario.

Mr Conway: I don't doubt that that is true, and ever has it been thus. There have been a lot of very smart people involved with this debate for a long time, but it is generally interesting how the Legislature has not played a very major role in that. The Legislature has been involved in Hydro affairs, usually, when there is some complete screw-up or some really delicious scandal. We've had a lot of select committees. I can think of about six in my time, and one really good one before I got here in the early 1970s.

I think about the select committee you did last year. I was stunned by what had gone on there in that seven- or eight-year period. I said then that if some of that information had ever become public in the early 1990s or the late 1980s — say from 1989 through 1996 — let me tell you, the environment certainly would have changed. If some of those exchanges between the federal regulator and the top brass at Ontario Hydro had ever seen the light of day, let me tell you, there would have been change, certainly because there would have been a very different kind of public environment. I was astonished at just how much of that stuff stayed put. It never did get out and I think the public interest was seriously harmed by that. I think a lot of people are responsible for that.

The exercise last year I thought was very useful, but on something this complicated, particularly for the politicians, because ultimately those are some of the decisions we're going to have to make — I, for example, like to be able to go back and say, "How's it going?" How is it going? We heard last year. Where are we this year? I would like the opportunity.

If I were running NAOP I wouldn't like it because of course it would be about accountability, and it might even be about transparency, because I might actually have to show up and face people like Johns and Lessard and Conway who were there last year and I might just check their notes and say, "This was the problem and this was the plan. How are we doing?" In the private sector, I think we call that benchmarking. For benchmarking and accountability to work there has to be some discipline and some rigour and some ongoing oversight.

I just think that the remarkable legacy of the electricity business in this province, particularly Ontario Hydro, is that it managed over a long period of time, for a variety of reasons, to be a very powerful and significant force that was public but beyond any kind of real public scrutiny and oversight. We're changing that with this new policy framework and I think that's in principle a good idea. Whether in practical terms this policy is going to deliver remains an ever-increasing question in my mind. But I just thought that Mr Frame particularly made a good point. It's not something about which I'm going to go to the wall, obviously, but I draw a distinction between some of the special committees that might be in place and one that involves the Legislature.

I sometimes think these days that if I were advising my constituents, increasingly, particularly after reading that *Times* piece this morning, I'd say: "Don't waste your time. Go extraparliamentary. It's a fiction. Don't play this

game the way the rules of the 19th century would have you play it. Forget it. Go and do it through extraparliamentary means, to use a polite phrase, and go after them. Go after them with a vengeance because you have some chance of perhaps getting some attention. Just don't be foolish enough to play this game by the old Marquess of Queensberry Rules, because they don't apply any more, and even if they did, that arena is a kind of pathetic, expensive irrelevance. Go where the action is. It's on the street. It's not in Parliament."

Mr Lessard: I want to speak in support of the amendment as well. I think the development of Ontario Hydro over the years has happened because it's a matter of tremendous importance for the economic well-being of our province. That wasn't unique in Ontario. It happened in a lot of other areas. It was such an important resource that it was deemed in the public interest to be a public utility. There have been other examples where we thought that things were that important. I can think of the airwaves, where the CRTC is so heavily involved. At one time the government was heavily involved in the development of the air traffic business. There are numerous other examples where the development of a segment of the economy was done, either by the public sector because it was important to make that investment at the time because nobody else would, or because it was so important that it needed to be regulated in the public interest.

1700

This policy is really changing that in a fundamental way. Bill 35 is really taking the government, to a great extent, out of the hydro business and opening the doors for others to come in and take over. I have some real concerns, some real fears, about how this is all going to pan out, but the decision has been made by the government to pursue this policy and we're just going to have to wait and see how it turns out.

When I think about the times when government committees have been involved in Ontario Hydro's affairs in the past, Mr Conway makes a good point: It has generally been at times of crisis, times of scandal, times when things have gone so seriously off the rails that intervention by politicians was a necessity. Perhaps if there's some reason that the government has chosen to pursue the policy set out in Bill 35, some reason we feel the way we do about Ontario Hydro, it's because legislators in the past have really not been involved as much as they should have been. Because of that Ontario Hydro has ended up in the situation it is in now, where there's an incredible amount of debt and they have assets that have little ability to pay for themselves, and the government is taking what they feel are some drastic steps to try and change that. I'm not sure this legislation is going to do that, but that is the stated intention of the government.

Even though the parliamentary assistant has said there are some very capable people who have been charged with developing the framework and policy and have some oversight abilities, like the Ontario Energy Board and the Independent Market Operator and the Market Design Committee, the concern I have is that as capable as those

people are, they're not elected representatives. They're hired because they're experts, and they're being involved in a process that is a political process; the policy decisions that have been made here are political decisions.

There needs to be accountability. There needs to be transparency. There needs to be some mechanism through which we, as legislators, in making the policy decision that is being made by this government, have a means of being able to monitor the impact of those decisions as the protectors of the public interest.

I think that is the reason this suggestion was made by Mr Frame and that's the reason it has been put forward by Mr Conway, so we can evaluate at some point in the future how all this policy turns out. Maybe there is some reason the government doesn't want to have that mechanism there. I'd be interested in hearing why they don't want it there.

Mrs Johns: I'd just like to say two things. I stand with what I said before, but we believe, of course, that accountability will come if people decide to stay with Genco or Servco or to move on to different companies. The accountability we're looking for to protect our people in the province of Ontario will come as a result of their decisions on where they'll purchase their power and what they'll do.

The second thing that's important to recognize is that for the first time in history, a government has introduced an independent regulator to regulate Ontario Hydro. Those people are there. They have a job to do. Hopefully, the legislation is such that the Ontario Energy Board has the power to control them. That's what we intended; that's what we have in place. The accountability, from my perspective, is totally there.

Mr Conway: The member makes a good point that this is a new scheme and that we are going to a competitive marketplace where we're not going to have the monopoly, so we are going to have a different kind of energy board. Quite frankly, there was a time when Hydro wasn't a monopoly and we did have competition, and there was no regulator. She makes a point, and I think it's a good point.

But as Mr Laughren observed when he was at the committee, they're going to be regulators but they are going to work within a certain framework. If the member has forgotten, and I'm sure she hasn't, the intention of the government is certainly to put the regulator in a policy framework. That's an issue we will debate later on. It's not as though the regulator is just going to operate without direction — that's according to your own bill — and the direction to be decided as prescribed in the regulations.

So let's not be too precious about just how the regulator is going to operate. You're absolutely right that the regulator is going to have, for the first time, some real and significant powers, and I think that's a good thing, a very good thing. But the policy environment in which the regulator is going to do business is not something that in the main the regulator is going to establish.

To come back to Mr Lessard's comment, I'm a former government House leader and I can think of a couple of very good reasons why you wouldn't want to do this, but it would be all to do with my concerns as a minister of the

crown. My responsibilities are not as a minister of the crown at this point; I'm a member of the Legislature and I've got responsibilities to the broad public. The interests of the cabinet are not always the interests of the Legislature. It comes as a big surprise to people, but it's reality. It used to be that in our system of government if you were a member of the Legislature or of Parliament, elected, and you were asked to join the cabinet, the first thing you had to do was resign and go and get a new sanction to sit in the executive council. It's just an old point to make the point that the two functions were different and sometimes contradictory.

The cabinet will set a potentially very sweeping range of policy for the regulator to follow. We'll talk about that later. But it's hard to imagine a more critical policy for the economic and social well-being of the public of Ontario than energy and electricity. I just make a very radical move to suggest that maybe the Legislature might have some ongoing involvement on an annual basis to review. I don't know whether it's my amendment or Wayne's amendment that talks a bit about — I guess it's that the standing committee's function would include consideration of the reports of the various — Genco and Finco and whatever else.

But, listen, it's no big deal. Compared to the other things in this bill — trust me — this is a second-tier concern.

The Chair: Further questions or comments? Seeing none, I put the question. Shall this amendment carry? All those in favour? Opposed? It's lost.

The next amendment is an NDP amendment.

Mr Lessard: I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following section:

"Reports referred to standing committee

"2.1(1) Every report made by the IMO under section 20 or 21, by the generating corporation or the services corporation under section 49 or 50, or by the finances corporation under section 75 or 76 shall be tabled in the assembly and referred to a standing committee of the assembly.

"Report to assembly

"(2) The standing committee shall consider the report and make a statement of its findings to the assembly within 90 days after the report is tabled."

1710

This is a similar amendment to the previous Liberal amendment that comes as a result of Mr Frame's presentation before our committee hearings. He was a very knowledgeable fellow with a great deal of experience in the Ministry of Energy for the Ontario government. I think that is experience that we should pay some credence to. He has seen a lot happen in Ontario Hydro over the years and I think we can benefit from that experience when he says that perhaps you should have a legislative committee look at the generating corporation and the services corporation operations after Bill 35 comes into force. This amendment would allow for public debate on electricity

policy on a regular basis, and on the performance of the system of competition.

Not to repeat my previous remarks, this is a major shift in public policy and it is incumbent upon us as legislators to ensure that the benefits that have been stated as a result of this change in policy — and those are the same ones we've been debating previously, that is, to promote competition and low-cost energy and to protect the environment. It's incumbent upon us to ensure that those objectives are achieved and, if they're not, to know why not and to be accountable for this policy change.

I understand the parliamentary assistant's remarks that the accountability is going to be through market forces. I have a real concern about that. I don't think it works effectively all the time. I don't want to see the role of us as legislators being diminished to the point where we turn over all of our powers to the marketplace and give up our ability to regulate and hope that what the marketplace determines is going to be good for all consumers. I don't think the market works that way. The market is a very ruthless force, and there are some people who win as a result and some people who lose. The people who are the losers are generally people who are the disenfranchised or the persons without the resources or the finances to defend themselves. That is the reason we do the job we do, to serve that public, to provide protection for those people who find it difficult to protect themselves in a completely market-based environment. This provides some level of accountability at the legislative level to ensure that benefits as they've been set out in this legislation are achieved.

Mr Conway: I'm not going to repeat the previous argument. I'll support this. It's obviously not going to go anywhere. It just reminds me of the need for a good old minority Parliament. The committee system, in my experience, is not much good unless you've got a minority environment — and I say that of all governments — because there's this tyrannical instinct in all Ontario cabinets. Trust me, if we ever get to another time of a minority Parliament, we'll get this and it will be very useful for all concerned.

The Chair: Further questions and comments? Seeing none, I put the question, shall this amendment carry? All those in favour? All those opposed? The motion is lost.

Questions or comments on schedule A, section 3? Seeing none, shall section 3 of schedule A carry? All those in favour? Opposed? It carries.

Schedule A, section 4: We have a Liberal amendment proposed on page 11.

Mr Conway: Can we just put the question? We know the result.

I move that subsection 4(1) of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following clause:

“(h) to promote lower-cost electricity for all consumers.”

Mrs Johns: I believe in this case that the legal department that was used by the Liberals has misinterpreted Mr Conway's intent here. This section is dealing with the Independent Market Operator, and the Independent Mar-

ket Operator, as I see it in my world, is like a stock exchange: They bring together demand and supply, but they don't have any role in price-setting, if you will. So I think this section isn't what Mr Conway intended to have happen. I just wanted to understand if that was the case or if I'm missing something on it.

Mr Conway: I appreciate that. I sent a memo to those worthies in the legislative drafting world. If in fact this attaches to the IMO — does it?

Mrs Johns: It's in section 4, and 3 and 4 are the IMO.

Mr Conway: Let me withdraw it. We've had the debate and I'm not going to waste time.

The Chair: It's withdrawn, then. Any further questions or comments on schedule A, section 4? Seeing none, shall section 4 of schedule A carry? All those in favour? Opposed? Carried.

Schedule A, section 5, questions or comments? Shall section 5 of schedule A carry? All those in favour? Opposed? Carried.

Schedule A, section 6: We have a government amendment on page 12.

Mrs Johns: I move that section 6 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

“Ceasing to hold office

“(7) A director ceases to hold office in the circumstances specified by the governance and structure bylaw.”

The concern in this section is that the Market Design Committee has suggested that the board of the IMO be set up with different stakeholder groups and different individuals who bring expertise to the board of the IMO. In this case, we are concerned that if we put someone in who comes from generation expertise, for example — in other words, they fit into the section that the Market Design Committee has suggested for a generator of power — and that person is no longer with a company that's a generator of power, we need the ability to have them cease to hold office in that particular example. This is a recommendation by the Market Design Committee to make sure we have a broad range of stakeholders on the board of the IMO.

Mr Lessard: It's interesting that the government considers our amendments to be redundant but that they come in with things like this one, when in clause 6(2)(b) it says, “At least 10 and not more than 20 other directors appointed by the minister in accordance with the regulations,” and 6(6) says, “The minister or the board of directors may remove a director from office for cause.” I don't really know what this adds to those sections. I think that power to determine whether a person continues to hold office is already in the bill.

Mrs Johns: A person leaving a position of employment with a generator, for example, is not cause. We have tested that before and we know that to be the case. The important part here is to recognize that we need a wide group of stakeholders to best represent the public. The IMO is charged with responsibility and safety; this is a very important board, so we need to make sure we always

have the right people on it to ensure the safety and reliability of power in the province of Ontario.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Any further questions or comments to section 6? Shall section 6 of schedule A, as amended, carry? All those in favour? Opposed? Carried.

Schedule A, section 7: Any questions or comments? Shall section 7 of schedule A carry? All those in favour?

On looking further through, we have no amendments up to and including section 14 of schedule A. Any questions or comments on any of those sections? Seeing none, shall sections 8 through to and including 14 of schedule A carry? All those in favour? Opposed? Carried.

Schedule A, section 15, is a government amendment on page 13.

1720

Mrs Johns: I move that clause 15(2)(c) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"(c) the filling of vacancies in the board, the removal of directors from office by the board and, for the purpose of subsection 6(7), circumstances in which a director ceases to hold office."

This is a consequential amendment as a result of our change to subsection 6(7) that we just discussed.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 15 of schedule A, as amended, carry? All those in favour? Opposed? Carried.

We have no amendments proposed for schedule A, sections 16 through to 24. Questions or comments? Seeing none, shall schedule A, sections 16 through to and including 24, carry? All those in favour? Opposed? Those carry.

Schedule A, section 25, is a government amendment on page 14.

Mrs Johns: I move that subsection 25(5) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Low-volume consumers

"(5) Subsections (3) and (4) do not apply to a contract for the supply of electricity to a low-volume consumer.

"Same

"(6) A contract for the sale of electricity between a low-volume consumer and a person who, at the time the contract was entered into, was not authorized under the Ontario Energy Board Act, 1998 to retail electricity ceases to have effect on the date subsection (1) comes into force unless, after the person becomes authorized under the Ontario Energy Board Act, 1998 to retail electricity and before the date subsection (1) comes into force, the low-volume consumer reaffirms the contract in writing.

"No cause of action

"(7) No cause of action arises as a result of a contract ceasing to have effect under subsection (3), (4) or (6).

"Return of prepayment

"(8) Despite subsection (7), a person to whom electricity was to be supplied under a contract referred to in subsection (3) or (4), or a low-volume consumer to whom electricity was to be sold under a contract referred to in subsection (6), may recover any amount paid under the contract before the day the contract ceased to have effect in respect of electricity that was to be supplied on or after that day.

"Application of subsections (3), (4) and (6)

"(9) Subsections (3), (4) and (6) do not apply to contracts prescribed by the regulations.

"Definition

"(10) In this section,

"'low-volume consumer' means a person who annually uses less than the amount of electricity prescribed by the regulations."

The Chair: Comments?

Mrs Johns: As a result of the consultation we had, and I especially remember the woman from London Hydro coming to Sarnia and talking about energy marketers already starting to sign up consumers, we have a balance to run here of creating business and also, which is a very important issue, of making sure the consumer is protected.

At this point most of us were very concerned that people were making contract decisions without understanding what the implications were and what the market was going to be like. What we have done here is we have said that for anybody who signed a contract before we're out there talking to consumers, before the consumers really understand what the marketplace is going to be like, we're going to give them a second chance to be able to reaffirm that contract.

We have also said that these marketers should not be out there right now, because they are not licensed to be out there, and we have to ensure that they get their licence first to be able to sign up people.

This is the height of protecting the consumer, and I think it's a very good way to start off the electricity market, with as many people as possible understanding all the implications of the marketplace.

The Chair: Further questions and comments?

Mr Lessard: A couple of the reasons that we have public hearings are, first of all, to give people an opportunity to provide input as to how they feel about government policy and legislation. Secondly, it gives people an opportunity to point out where there might be screw-ups in the bill as a result of the haste with which the government has gone through this exercise.

This is one of those sections, where I think subsection (5) corrects an error that would have led to the automatic cancellation of all contracts between consumers, MEUs and Hydro. I know that was an inadvertent oversight; that wasn't the intention of the government. Because of that, that was something that was pointed out during the time period after the bill was introduced and the time that people had an opportunity to provide some input into the legislation. So the committee hearings are a useful exercise, and I would hope the government considers some of the amendments that we have been putting forward, and

will continue to put forward, as the result of the comments that we heard from people as well.

I'm going to support this amendment for one very good reason, and that is that it does enhance consumer protection. I think we may have an amendment that is similar in nature in a different section of the bill which we may not have to go forward with to treat the issue of consumers who sign contracts with brokers prior to the proclamation of the bill. We know there are a lot of unscrupulous brokers who are out there, or will be out there, trying to take advantage of consumers who may not know better. They may not ever know any better if the government doesn't decide to undertake, or require the undertaking of, some consumer education program, which we've also asked that they undertake, because we feel that's an important consumer protection mechanism also.

We think it's a good idea that any contracts that have been signed by consumers before the date that the legislation comes into effect be voidable, and I'm going to be supporting this amendment.

The Chair: Further questions and comments? Seeing none, I put the question, then. Shall this amendment carry? All those in favour? Carried.

Any further questions or comments on section 25?

Shall section 25 of schedule A, as amended, carry? All those in favour? Opposed? It carries.

Schedule A, sections 26, 27 and 28 have no amendments proposed. Questions or comments?

Shall schedule A, sections 26 through to and including section 28, carry? All those in favour? Opposed? Carried.

Section 28.1 is a new section. It's a government amendment on page 16.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Allocation during emergencies, etc.

"28.1(1) If the supply of electricity to a distributor is interrupted or reduced as a result of an emergency or a breakdown, repair or extension of a transmission or distribution system, the distributor may allocate the available electricity among the consumers in its service area.

"No breach of contract

"(2) An allocation of electricity under subsection (1) shall be deemed not to be a breach of any contract."

This section was suggested to us by the MEA and the municipal commissions that came before us. They were citing the example of the ice storm and the tough decisions that had to be made, as a distributor, about how to provide electricity. We have given them the opportunity to be able to do this so that things like hospitals and necessary institutions could be given power first.

1730

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Going on then to section 29, schedule A, a government amendment on page 17.

Mrs Johns: I move that section 29 of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Termination of service

"29(1) A distributor may shut off the distribution of electricity to a property if any amount payable by a person for the distribution or retail of electricity to the property pursuant to section 28 is overdue.

"Notice

"(2) A distributor shall provide reasonable notice of the proposed shut-off to the person who is responsible for the overdue amount by personal service or prepaid mail or by posting the notice on the property in a conspicuous place.

"Recovery of amount

"(3) A distributor may recover all amounts payable despite shutting off the distribution of electricity."

What we are concerned about here is that we changed the word "rate" to "amount" in subsections (2) and (3) and we cross-referenced this to section 28, "pursuant to section 28." The MEA came before us and suggested that there was a concern with default suppliers and the non-payment of bills.

The Chair: Further questions or comments? All those in favour? Carried.

Further questions or comments to section 29? Shall section 29 of schedule A, as amended, carry? All those in favour? Opposed? Carried.

Schedule A, section 30, we have a government amendment, page 18.

Mrs Johns: I move that subsection 30(2) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following clauses:

"(a.1) governing the conveying of electricity into, through or out of the IMO-controlled grid and the provision of ancillary services;

"(b.1) authorizing and governing the giving of directions by the IMO, including,

"(i) for the purpose of maintaining the reliability of electricity service or the IMO-controlled grid, directions requiring persons, within such time as may be specified in the direction, to synchronize, desynchronize, increase, decrease or maintain electrical output, to take such other action as may be specified in the direction or to refrain from such action as may be specified in the direction, and

"(ii) other directions requiring market participants, within such time as may be specified in the direction, to take such action or refrain from such action as may be specified in the direction, including action related to a system emergency."

What we heard when we went to the IMO was that they were to be charged with reliability and safety. The IMO felt that this section wasn't clear enough to make sure that power was being dispatched. So this section was put in there for the IMO.

The Chair: Questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? Carried.

The next amendment is also a government amendment, found on page 19.

Mrs Johns: I move that subclause 30(2)(c)(i) of the Electricity Act, 1998, as set out in schedule A of the bill, be struck out.

This section was moved to 30(2)(b.1)(ii).

The Chair: Questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? It carries.

The next is also a government amendment, on page 20.

Mrs Johns: I move that subclauses 30(2)(c)(iii) and (iv) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"(iii) authorizing a person to participate in the IMO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IMO-controlled grid, or

"(iv) terminating, suspending or restricting a person's rights to participate in the IMO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IMO-controlled grid."

In this section we wanted to ensure that when we were talking about the IMO's responsibilities, we were sure that a bilateral contract, which I think everyone knows is a contract between two persons to buy and sell power, was going to go through the IMO grid, that there was going to be some accountability within the IMO for the bilateral contract so that everyone knew what kind of power was being moved throughout the province.

The Chair: Further questions and comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

The next one also is a government amendment. This is found on page 21.

Mrs Johns: I move that subsection 30(4) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "any orders" in the second line and substituting "any directions or orders."

What we're trying to do is to ensure that the regulatory act cannot interfere with or does not apply to the directions or the orders made by the IMO.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions or comments to schedule A, section 30? Shall section 30 of schedule A, as amended, carry? All those in favour? Opposed? This section carries.

Schedule A, sections 31, 32 and 33 have no amendments. Is there any discussion or comment on those sections? Seeing none, shall sections 31, 32 and 33 of schedule A carry? All those in favour? Opposed? They carry.

Schedule A, section 34, a government amendment found on page 22.

Mrs Johns: I move that clauses 34(1)(b) and (c) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"(b) denies the person authorization to participate in the IMO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IMO-controlled grid; or

"(c) terminates, suspends or restricts the person's rights to participate in the IMO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IMO-controlled grid."

In this section what we are ensuring is that the IMO powers extend to individuals with bilateral contracts. Also, if people feel they have been wronged, they have an appeal process through the Ontario Energy Board.

The Chair: Questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions and comments on section 34? Seeing none, shall section 34, as amended, carry? All those in favour? Opposed? It carries.

Section 35, schedule A, a government amendment found on page 23.

Mrs Johns: I move that subsection 35(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding at the end "or the conduct of a market participant."

This is a consequential amendment that's referring to the market participants we talked about in, I think, section 2 of the act. What we're trying to ensure is that all market participants are covered under the IMO and only those people have the ability to use the grid.

1740

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? It carries.

Any further questions or comments on section 35? Shall this section, as amended, carry? In favour? Opposed? This section is carried.

There is no amendment proposed on section 36. Questions or comments? Shall section 36 of schedule A carry?

In favour? Opposed? Passed.

A new section proposed, 36.1, by the government, on page 24.

Mrs Johns: Is this not the Liberal motion here at 36.1 and 36.2?

The Chair: My apologies. We've got an error in our writing. Sorry, it is a Liberal motion. Mr Conway, sorry.

Mr Conway: You're doing a stellar job, Madam Chair, under difficult circumstances, so I commend you for your fortitude.

I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following sections:

"Hearing re market issues

"36.1(1) The board shall hold a public hearing to determine,

"(a) whether market power has been or is likely to be abused; and

"(b) whether market dominance has prevented or is likely to prevent some or all customers from gaining benefits that could be achieved.

"Hearing an additional requirement

"(2) The hearing is required whether or not the Market Surveillance Panel acts under section 35 and whether or

not the panel makes recommendations described in subsection 36(1).

"Time for hearing

"(3) The hearing shall begin after the second anniversary of the coming into force of section 3 but before its third anniversary, and shall be completed by March 30, 2003" — my goodness, it sounds millenarian already.

"Time for report

"(4) The board's report on the hearing, which may include any recommendations that the board considers appropriate, shall be made public within 60 days after the hearing is completed.

"Response

"(5) The government of Ontario and the Generation Corp shall each respond to the report and shall make their responses public within 60 days after the report is made public.

"Additional powers of board

"(6) On the completion of the hearing, the board may amend a licence or make an order in the same way as on the completion of a review under subsection 36(2) or (3).

"Further hearing, disaggregation of generation facilities

"36.2(1) After the responses of the government of Ontario and the Generation Corp have been made public under subsection 36.1(5), the board may hold a further hearing,

"(a) to determine whether the Generation Corp should be required to divest itself of a proportion of its generation facilities; and

"(b) to determine what the proportion should be.

"Order

"(2) On the completion of the hearing, the board may make an order requiring the Generation Corp to divest itself of a specified proportion of its generation facilities and may give all necessary directions in that connection."

This, colleagues, is for me an important aspect of the critical debate around market power. In fact, the genesis for this amendment arises out of testimony advanced by everyone from the MEA, the consumers' association, AMPCO and a number of other individual utilities like Lincoln and Pelham, two that I just made a note of.

I take my lead here from the consumers' association, which I thought really gave us a very good brief. They reminded us that residential consumers consume 70% of all electricity in the province, and they are really very much at sea with this, particularly if they don't get the protection of the board. I won't bore you with the details, but looking at it again I was struck by some of the language, reading now from the consumers' association presentation to us here at Toronto. Who'll ever forget the way poor Mr Dyne was cross-examined by the ever-charming member from Scarborough.

Can you imagine what the nuns would have done with Mr Gilchrist had he performed like that in front of — Anyway, I gather he spent some time at the Robert Land Academy, and I'm not surprised.

Interjections.

Mr Conway: Well, think about it.

Mr John R. Baird (Nepean): We don't want to.

Mr Conway: I know.

The Chair: Perhaps we should turn our attention to the matter —

Mr Conway: He's not here and I shouldn't say it in his absence, but that was pretty remarkable.

Mr Baird: You're scaring us.

Mr Conway: I don't know that there's much to laugh about. If I were a citizen and I came to this committee and one of my elected officials treated me that way, I'm going to tell you it wouldn't be very pretty, what I would contemplate doing, and it probably wouldn't be Marquess of Queensberry Rules either.

"This committee must understand," said Peter Dyne of the Consumers' Association of Canada, "that the process of working out those details can and will be captured by those with an economic stake in the" form and content of the "restructured energy market. Those entities do not have the interests of residential consumers at heart. The inevitable result...is that there will be more devil in the details than residential consumers would like." That's just one citation from the brief.

Market power is a very real concern of mine, because it is abundantly clear that someplace between Macdonald and the white paper the government made a sharp change in direction. They did not do as Macdonald warned had to be done as a precondition to effective competition. That's a dramatic development in this whole story. It is an important development because it speaks to that part of the marketplace where the bulk of the savings has got to occur. This lack of competition, this market power issue, is aggravated by the fact that the sole shareholder going into the competitive marketplace is going to be the government of Ontario. Ernie Eves and Bryne Purchase, or whoever is over there running that ship, has a vested interest that is not going to be in the interests of residential consumers, particularly around market power questions.

The policy contemplates that the successor companies are going to go out, Genco especially, and be aggressive in the marketplace, that they're going to pay taxes and dividends. I understand that, but you can appreciate how that could lead a residential consumer to think, "Whose interests are going to be served here?"

The point I'm getting at with this amendment is quite straightforward. The amendment essentially requires the following: that sometime, probably two, two and a half years into the competitive marketplace, the regulator shall hold a public hearing to look at whether or not in the view of the regulator, my protector, if I'm a residential consumer — remember what Mr Dyne and his colleagues said.

AMPCO comes in beating its breast, saying they are representative of the major power consumers. Seventy percent of the power in this province is consumed by the millions of residential and farm customers. Because they are so small and so individual, they do not have the kind of protection, save and except the energy board. For me, as a residential or farm customer who's hoping and praying for a fair deal and reasonable treatment, my protection in this is the energy board.

I'm going into this concerned about market power. The concern may be misplaced, but it's hard to go in feeling very positive since there is a lot of literature and testimony saying that the way to get the competition is to disaggregate the giants going in. We haven't done that, and we're going to do some other things as yet to be determined. So market power may very well mean that some of the big players, including the Ontario government, which has a very real financial interest — remember, it's going to be the sole shareholder of Genco. It's going to expect a rate of return. It's going to expect dividends. One could very quickly imagine how the interests of the sole shareholder would lead to some decisions around the behaviour of Genco that very well might not be in my interests as a residential consumer.

I thought the fair thing to do here was — and not right away. I think the market has got to be given the time to evolve, but sometime two or three years out, not later than March 30, 2003, a hearing must be held by the regulator to assess whether or not there is, or there appears to be, an abuse of market power by Genco. Let's not kid ourselves. If there isn't, there is no problem. If there is, the board is empowered to give some direction around the mitigation of that market power.

1750

I think it is a very reasonable point. It's a very reasonable amendment, particularly if you believe that the broad base of residential and farm consumers have a right to some reasonable protection around what anyone who's looked at the deregulation of the electricity marketplace would tell you is one of the critical questions, namely market power. Since these discussions — I read from Osborne and Farlinger and others that this isn't going to be a mom-and-pop operation. This is going to be about big boys and girls with 20,000 and 30,000 megawatts of power to bring to the table. If they're right, and they may be, all the more reason why I want the regulator making an assessment openly and dispassionately around market power. It has to be the regulator. I'm quite prepared to say it ought not to be the Legislature, but it cannot be the government. The government is in a conflict of interest here, not just this government, any government, under this proposition.

Market power, the potential abuse of market power, is a critical question for ratepayer protection, particularly for residential and farm consumers. This I think very reasonable amendment is offered as a straightforward effort to bring some transparency to the market power issue, particularly two or three years into the working of the competitive marketplace. It may be that there is no problem, in which case that will be the report of the board and it's quickly disposed of. But in the event that the regulator determines that there is market power working against the interests of consumers, then the amendment contemplates that the board has some power to order a mitigation of that.

Mrs Johns: I first of all just want to say that I don't quite buy that the Minister of Finance or the government of Ontario isn't concerned, as a shareholder, as you said,

but more importantly, for the residential consumers in Ontario. They elect us all and we certainly, hopefully, represent them and are concerned about them.

What I'd like to leave with today so that you can consider this is that we believe the Ontario Energy Board has these powers at this present time. We're concerned about abuse of market power. That's of course why the Market Design Committee has been working on this for their last report.

Let me just draw to your attention that the bill contains authority for the minister to be able to direct the Ontario Energy Board to undertake such a hearing, which I understand doesn't give you very much comfort. The board can also enter into a hearing as a result of a policy directive from the government, a complaint by any person or a complaint or a request to the Market Surveillance Panel to look into this issue. So we have three different alternatives there, and two of them are not government-directed. Any person who feels that they've been slighted as a result of abuse of market power — and the Market Surveillance Panel, which is part of the IMO, of course.

What's important to recognize is we think that this monitoring of market power is going to happen on day one and continue throughout the process. We think we have this in here in a much stronger way than you do, where just at the end of three years we start to look at this. Any generator who feels they've been slighted as a result of market power from Genco could ask the Ontario Energy Board to investigate that. So I think we have this in a much stronger way that starts on day one and doesn't just have some magic date on it, where in 2003 we start to look at that. This is an issue that we're concerned about today. We're going to be concerned about this all the way through the process. I will get you those sections if you'd like to have a look at them.

Mr Conway: I appreciate the member's point, and she's right. This is an important point for me. I do not take any comfort from the directive power of the minister, both because, as I said the other day, I can imagine the fighting that is going on, and that will go on, inside government between finance and energy. Those will be the ugliest, nastiest, dirtiest fights of all. When finance is finished with him or her, if the Minister of Energy is alive to drag his or her feet and posterior down to some regulator, I'll be surprised. Les knows of what I speak, if no one else does. I won't embarrass him by asking for any stories, but the landscape is littered with these kinds of battles.

I would have much less worry if I had players who were purporting neutrality but who clearly have an interest. Good God, if anything is clear, the Minister of Finance has real interest. I understand that. I've said to you before, I played a lot of sports in my day and I always like an umpire who has no interest in the result of the game. This is a referee with a huge interest in the result of the game and a very real control over some of the rules of the game. We've got this problem with market power going in. If we had what Macdonald recommended, I'd be a lot less concerned if, going into this, we were doing what Don

Macdonald and Darcy McKeogh and company suggested two and a half years ago.

Remember what they suggested? They suggested that in the first instance, but as a fundamental first instance, there ought to be a disaggregation of the current Genco into three, four or five competing public companies. I'll tell you, if we had that going in, I would be a lot less concerned, but we don't have that. Everybody knows, going in — Osborne keeps saying it — we've got 86% of the market power. Once this market is opened up, these two new companies, but particularly Genco, have one shareholder, and the shareholder is going to have a variety of interests.

I can't imagine there's going to be anybody over there who imagines they're going to be doing things that are completely antithetical to the public interest, but they may be thinking about the public interest in the intermediate and longer term. The Minister of Finance will always be looking at and worried about his cash flow, his financial situation. He's now got his hands on something that is going to produce some very real cash through a variety of means: dividends, taxes or payments in lieu of taxes.

Going back to Dr Galt's point with this policy, it's hard to imagine rates going up, I say again that if the government decides that, for example, the only way an MEU is going to purchase Servco distribution or retail assets is at market values, let me tell you that is a critical point that will drive rates up. It has to. Similarly, you've got to borrow the money. If I'm going to buy it, and I'm going to buy it at \$40 million, not at \$10 million, I've got to borrow that extra \$30 million. I can certainly borrow it and I can finance it, but those financing charges have got to go on rates. There's no place else to put them.

On market power, if I am looking at this and saying, "I'm going in now and I'm the principal shareholder" — I won't be the only shareholder after a short while, I can assure you of that. That's where Mr Lessard may get really nervous. Trust me, you're not going to be the only shareholder, but you're going to be the big shareholder for some time. I'm telling you that, particularly if the economy starts to behave in an unexpected way and you start to get into choppy waters, what do you think you're going to do? I've been around finance departments long enough to know what their first, second and last instincts are going to be: "Dividends, payments in lieu, you crank them out fast. Get them in here." That has an implication on rates, particularly on the broad base of rates, because that's the place you'll get the most money for the least apparent impact.

Remember, 70% of power is consumed by I don't know how many millions of residential and farm customers. I'm one of those customers. I'm from Missouri. I want some protection, and I really want some protection around market power, particularly because of the design of this policy going in. I don't think it is unreasonable to say to that farmer or apple grower in Northumberland, "We're going to ask those smart people at the energy board just to make sure."

I've written this so that it's not on day one. You're absolutely right; I expect it's going to take some time to get moving. If I've been too generous, tell me, we can amend it, but I want to be reasonable. I just think that the member made the point a while ago, and she's right, that we're giving the OEB, the regulator, significant new powers, and we're giving those powers because we've got now a market that we want to work largely on market forces. We don't want it to be unduly manipulated by the politicians of whatever stripe. I understand that. So if that's going to work, I am going to put my faith in the independent regulator. Some of these other groups are all well and good, but I'm from Missouri and I'm going to take my chance with the apparent free-standing regulator.

If other people want to get involved and have some ancillary activities around this question, fine. But because of my concern that this policy works to the advantage of all customers, especially residential and farm customers, I think we owe it to them, given the clear concerns about market power going in, given the fact that the government rejected, for whatever reason, the Macdonald committee's recommendations around disaggregation, given the fact that because the government will be the sole shareholder in the successor companies and because they will be thirsty for money and they'll get their money through dividends and other special payments, and that will lead to a conflict of interest that may very well not work in the short and intermediate term to the benefit of residential and farm customers, millions of them, as they are.

I think it is a very modest and reasonable proposal to suggest that this newly empowered independent regulator be given the opportunity two, two and a half years into the operating of this new market to have a hearing, to hear from all players: Is there a problem? Does there appear to be an imminent problem around market power? If not, no problem. If so, give them some opportunity to mitigate that in the public interest, especially the consuming interest of those millions of residential and farm customers.

The Chair: Further questions or comments?

Mrs Johns: We're over the limit. I understand your discomfort with the government, but I want to once again reinforce in clause 73(1)(b) we talk about the Ontario Energy Board being able to go in in the public interest. In subsection 73(3) we talk about the Market Surveillance Panel being able to request that the Ontario Energy Board look at these. This starts on day one and moves through. I asked you to consider that because I think what has been put in the bill is a stronger opportunity than what you're suggesting with a review in three years.

Mr Conway: You know that we have testimony from people like Energy Probe and others who were very concerned about the fact that some of those provisions to which Mrs Johns has just made reference comes after the significant, sweeping directive powers that the government has given itself around policy issues to guide the regulator.

I can say this more easily than you. I went ballistic here about five or six years ago when the then government of the day in the old Bill 118 sought to give itself pretty significant new directive powers. If you believe in the

market, you've got to take the market and you've got to put some kind of arm's-length regulator. That's what I thought we were doing.

I look at the OEB sections of this bill and I see the directive power the government seeks to give itself in framing the policy environments in which the OED's got to work. Given the conflict of interest in which the government finds itself because of the kind of initial structure it wants to have, I think the public, the residential and farm customers, need a clearer, firmer protection around the potential abuses of market power for that reason and I think this amendment gives it to them.

Mr Baird: I think the member for Renfrew North has made some thoughtful comments on this. I think we're all certainly concerned about the market power it's going to have.

Given the time on the clock, perhaps we could have until the next meeting to reflect on his thoughts and vote on it at that time.

The Chair: Okay. It is six o'clock so we will adjourn and reconvene on Monday.

The committee adjourned at 1804.

CONTENTS

Wednesday 30 September 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson /*

Loi de 1998 sur la concurrence dans le secteur de l'énergie,

projet de loi 35, *M. Wilson* R-437

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Mr Robert W. Runciman (Leeds-Grenville PC)

Mr Toni Skarica (Wentworth North / -Nord PC)

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Doug Beecroft, legislative counsel

R-12



R-12

ISSN 1180-4378

**Legislative Assembly
of Ontario**

Second Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 36^e législature

**Official Report
of Debates
(Hansard)**

Monday 5 October 1998

**Journal
des débats
(Hansard)**

Lundi 5 octobre 1998

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Energy Competition Act, 1998

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



**Chair: Brenda Elliott
Clerk: Donna Bryce**

**Présidente : Brenda Elliott
Greffière : Donna Bryce**

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 5 October 1998

Lundi 5 octobre 1998

The committee met at 1530 in committee room 1.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

The Vice-Chair (Mr Peter L. Preston): It is 3:30. We were going to call the meeting to order, but we will not conduct any business for a five-minute period in order to allow the opposition parties to arrive. If they do not arrive in five minutes, we will continue with our business.

The committee recessed from 1530 to 1535.

The Vice-Chair: As the meeting was brought to order at 3:30 and we gave five minutes' leeway, it is now 3:35. We're continuing with clause-by-clause of Bill 35.

At the last meeting we left off with — I'll call it amendment 24, a Liberal amendment that's already been read and somewhat discussed. Are there any further comments?

There being none — this is the new section — all in favour of the new section? All opposed? The amendment doesn't carry.

Mr Doug Galt (Northumberland): I beg your pardon?

The Vice-Chair: The amendment doesn't carry.

Mr Galt: Okay. Thank you.

The Vice-Chair: You weren't accusing me of making a mistake, were you?

Mr Galt: No, no. Far be it from me to accuse the Chair of a mistake. I just needed to understand.

The Vice-Chair: Government motion, number 26 as numbered in your book.

Mrs Helen Johns (Huron): I move that section 37 of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Emergency plans

"37(1) The minister shall require the IMO to prepare and file with the minister such emergency plans as the minister considers necessary.

"Same

"(2) The minister may require a market participant to prepare and file with the minister such emergency plans as the minister considers necessary.

"Coordination of plans

"(3) The IMO shall assist in coordinating the preparation of plans under subsections (1) and (2).

"Implementation

"(4) The minister may direct the IMO or a market participant to implement an emergency plan filed under subsections (1) or (2), with such changes as the minister considers necessary.

"Nuclear generation facilities

"(5) Every generator that owns or operates a nuclear generation facility shall file with the minister a copy of any emergency plans relating to the facility that are filed with the Canadian Nuclear Safety Commission.

"Same

"(6) Until section 74 of the Nuclear Safety and Control Act (Canada) comes into force, the reference in subsection (5) to the Canadian Nuclear Safety Commission shall be deemed to be a reference to the Atomic Energy Control Board."

What's happening in this section is that we are removing the reference to nuclear power plants as a result of the Atomic Energy Control Board coming before us and their concerns that this was under their mandate and not the provincial government's.

The Vice-Chair: Other comments? Further debate?

All in favour? Opposed? Carried.

Shall section 37, as amended, carry? Carried.

Government motion, page 27.

Mrs Johns: I move that subsection 38(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Powers of entry

"(1) A transmitter or distributor may, at reasonable times, enter land on which its transmission or distribution system is located,

"(a) to inspect, maintain, repair, alter, remove, replace or disconnect wires or other facilities used to transmit or distribute electricity; or

"(b) to install, inspect, read, calibrate, maintain, repair, alter, remove or replace a meter."

This has to do with the right of access to public roads and highways. We heard a fair amount of this from the Municipal Electric Association and the utilities that came before us, and we're trying to make consistent clauses (a) and (b) of the proposed amendment.

The Vice-Chair: All in favour? Opposed? Carried.

Section 38, as amended: Shall it carry? All in favour? Opposed? Section 38 shall carry, as amended.

Government motion, number 28.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Public streets and highways

"38.1(1) A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.

"Inspection, etc.

"(2) The transmitter or distributor may inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities constructed or installed under subsection (1) or a predecessor of subsection (1).

"Entry

"(3) The transmitter or distributor may enter the street or highway at any reasonable time to exercise the powers referred to in subsections (1) and (2).

"Employees, etc.

"(4) The powers of a transmitter or distributor under subsections (1), (2) and (3) may be exercised by an employee or agent of the transmitter or distributor, who may be accompanied by any other person under the direction of the employee or agent.

"No consent required

"(5) The exercise of powers under subsections (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway.

"Identification

"(6) A person exercising a power of entry under this section must on request display or produce proper identification.

"Notice, compensation, etc.

"(7) If a transmitter or distributor exercises a power of entry under this section, it shall,

"(a) provide reasonable notice of the entry to the owner or other person having authority over the street or highway;

"(b) in so far as is practicable, restore the street or highway to its original condition; and

"(c) provide compensation for any damages caused by the entry.

"No compensation

"(8) Subject to clause (7)(c), the transmitter or distributor is not required to pay any compensation in order to exercise its powers under subsections (1), (2) and (3), and the Expropriations Act does not apply in respect of anything done pursuant to those powers.

"Location

"(9) The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the board.

"Application of subsection (9)

"(10) Subsection (9) does not apply if section 91 of the Ontario Energy Board Act, 1998 applies."

What we have here is, we're talking about road allowances. Again, this was requested by the Municipal Electric Association and the specific utilities who came before us in Ontario Hydro. We're trying to ensure that there are rights to be able to access roads and allowances without compensation.

The Vice-Chair: Shall section 38.1 carry? All in favour? Opposed? Section 38.1 is carried.

Number 30, a government motion.

Mrs Johns: I move that subsections 39(1) and (2) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Telecommunications services

"(1) If part of a transmission or distribution system is located on land with respect to which the transmitter or distributor has an easement or other right to use the land, the transmitter or distributor may,

"(a) use the land that is subject to the easement or other right for the purpose of providing telecommunications service; or

"(b) enter into agreements with other persons, including affiliates of the transmitter or distributor, authorizing them to use the land that is subject to the easement or other right for the purpose of providing telecommunications service.

"Same

"(2) Subject to subsection (2.1), subsection (1) applies despite any other act and despite any agreement or instrument to the contrary.

"Same

"(2.1) Clause (1)(a) is subject to section 70 of the Ontario Energy Board Act, 1998.

"No compensation

"(2.2) The transmitter or distributor is not required to pay any compensation for attaching wires or other telecommunications facilities to a transmission or distribution pole pursuant to clause (1)(a).

"Same

"(2.3) A person who is authorized to use land pursuant to an agreement entered into under clause (1)(b) is not required to pay any compensation, other than compensation provided for in the agreement, for attaching wires or other telecommunications facilities to a transmission or distribution pole pursuant to the agreement."

We heard a little bit in the committee about telecommunication issues. We're trying to ensure that there is a right to be able to use the poles for telecommunications.

The Vice-Chair: Further discussion? Shall this section carry? Carried.

Shall section 39, as amended, carry? Carried.

Number 32.

Mrs Johns: I move that section 40 of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Easement over lands sold for taxes: transmitters and distributors

"40(1) Despite any other act, if land that was or is subject to easements, ways, rights of way or entry, licences or rights to maintain property thereon, owned by or belonging to a transmitter or distributor, has been or is sold for taxes, or in respect of which a tax arrears certificate has been or is registered, such easements, ways, rights of way or entry, licences, or rights to maintain property shall be deemed not to have been or be affected by the sale or registration.

"Same: generators

"(2) Despite any other act, if land that was or is subject to flooding rights owned by or belonging to a generator has been or is sold for taxes, or in respect of which a tax arrears certificate has been or is registered, such flooding rights shall be deemed not to have been or be affected by the sale or registration."

This amendment was put forward to ensure that the generator did not lose any flooding rights as a result of properties being sold for tax arrears.

The Vice-Chair: Further discussion?

Mr Wayne Lessard (Windsor-Riverside): I'd like to know what flooding rights generators have now and what the reason was for the change in the way the section's set out right now. It looks like it referred to flooding rights originally in section 40. Now it's being dealt with so that flooding rights are in a separate subsection. I wonder if we could get an answer to that.

Mrs Johns: You're quite right. In subsection 40(1) we took out flooding rights — it was in the second line — and then we put in subsection (2), which talks about flooding rights specifically.

Ontario Hydro raised this issue, as well as the MEUs. They both own generation facilities, and they were very concerned that as properties got sold, as a result of not having titles on the land — they have always had flooding rights — they would be lost. We wanted to ensure that they continued on if they had them at present.

Would you like more of a legal opinion on that?

Mr Lessard: I just wondered whether it gives generators any additional rights to the ones they may have had before.

Mrs Cynthia Brandon: No, it doesn't. It only protects what they have now, or what they may acquire, but it relates to protecting that flooding right in the event of a sale of that property. The reason we had to split out flooding rights is because section 40 as drafted right now only refers to transmitters and distributors, and in further discussions we've realized that flooding rights really relate to generators and not transmitters and distributors, so it's been carved out and made a separate subsection for flooding rights.

The Vice-Chair: Further discussion? Shall the amendment carry? All in favour? Opposed? Carried.

Shall section 40, as amended, carry? Section 40, as amended, is carried.

Shall section 41 carry? There are no amendments to it. All in favour? Opposed? Section 41 is carried.

Shall section 42 carry? Opposed? It's carried.

1550

Government motion, page 33.

Mrs Johns: I move that subsections 43(1) and (2) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Unregistered rights

"(1) If, immediately before the repeal of section 48 of the Power Corporation Act under the Energy Competition Act, 1998, land was subject to a right referred to in subsection 48(2) or (3) of the Power Corporation Act, the land continues to be subject to the right until the right expires or until it is released by the holder of the right.

"Transfer of right

"(2) A right referred to in subsection (1) may be transferred to,

"(a) the generation corporation;

"(b) the services corporation;

"(c) a subsidiary of the services corporation that is authorized to transmit or distribute electricity;

"(d) a corporation established pursuant to section 130 that is authorized to transmit or distribute electricity; or

"(e) a subsidiary of a corporation established pursuant to section 130, if the subsidiary is authorized to transmit or distribute electricity."

What we're doing here is that we're narrowing who these easements can be passed to, so we've specifically listed them under (a) to (e).

The Vice-Chair: Further discussion? Shall the amendment carry? Opposed? Carried.

Shall the section, as amended, carry? Opposed? The section, as amended, carries.

Page 34.

Mrs Johns: I move that section 44 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "any property" in the fifth line and substituting "any wooden transmission or distribution pole."

We've put this motion forward because we feel that signs on poles can create a danger to people who might be working on the poles. It's really a safety issue that was brought forward by the MEA and Ontario Hydro. Of course, this might affect us all in campaign time.

Mr Lessard: This is a restriction, I guess, by making this amendment so that it only covers wooden transmission and distribution poles and not any property, so it actually narrows the way it's currently set out.

Mrs Johns: It does.

The Vice-Chair: Further discussion? Shall the amendment carry? Opposed? Carried.

Shall the section, as amended, carry? Section 44 carries, as amended.

Now we're on page 35, an NDP motion.

Mr Lessard: I move that section 45 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following subsections:

"Share ownership

"(4) No person other than Her Majesty in right of Ontario or an agent of Her Majesty in right of Ontario shall hold or acquire the voting securities of a designated corporation.

"Directors

"(5) The directors of a designated corporation shall be appointed by the Lieutenant Governor in Council."

The purpose of this section is to keep Genco and Servco public, and it provides that cabinet is required to appoint their directors. As I've indicated on previous occasions, I really feel as though it is this government's agenda that they intend on privatizing Ontario Hydro.

The reason I feel that way is because they've appointed Sir Graham Day to the board of directors of Ontario Hydro, a person who is well known for his privatization experience in Great Britain; also, the inclusion of the privatization section in the job description of the new president for Ontario Hydro, Ron Osborne. Notwithstanding the minister's assurances that privatization wasn't part of the government's agenda and wouldn't be looked at for at least five years, when I asked him about whether there was any restriction on privatization within the bill itself, he clearly indicated that there wasn't.

There isn't anything to stop the minister or the government, the day after this legislation is passed, from pursuing an agenda to privatize Ontario Hydro. That's where we think this is heading, and this section is being proposed to put some protection in the legislation to prohibit the privatization of Ontario Hydro.

Mrs Johns: The government has been quite clear that we are open to public-private partnerships initially. It's important for us all to remember that even the Power Workers' Union is talking about making some creative arrangements to get Bruce A back and ticking as quickly as possible. As a result of the Liberal leader being in Bruce the other day and promising that he was going to do as much as he could to get Bruce A back up and running, I think it's important for all of us to recognize that we may need expertise in that plant or we may need different skill sets than we have now, and this motion that the member has put forward would limit any kind of public-private partnership where there was an equity position being taken.

Mr Sean G. Conway (Renfrew North): This is an important amendment and I want to raise my concerns about it. We have a situation today where the provincial utility is, I think, virtually bankrupt. It faces some exciting possibilities, but it faces some absolutely impossible short and intermediate financial and related pressures.

I appreciate where the member, Mr Lessard, is coming from, and I believe there is quite an important role for the public sector in the electricity business as we move forward. Having said that, Ontario Hydro was never intended to be the monopoly that it became. I think it is incumbent on this Legislature, or any Legislature in the next few years, to redress the monopolistic imbalance that's developed over the last 45, 50 years.

I think the member for Huron makes a good point. If you just look at the nuclear division — and remember; I think it is a fair thing to say that the single biggest aspect of the company today is the nuclear division. It's where most of the generation is to be found, it's where most of the debt is to be found, and it's where most of the trouble is to be found.

We face some very difficult choices in terms of what to do with that nuclear power division. None of the choices is easy, including presumably walking away from the whole damn mess at a cost of God knows how many billions of dollars, and that's certainly not my instinct. I suppose if the federal regulator tells us we can't do anything else or that the economics of the situation suggest we can't do anything else, then very reluctantly we would have to do so.

But we have a huge investment in those plants and we've got a very large problem in terms of trying to develop and maintain an operational culture that apparently we're going to need to run those plants with a much greater degree of efficiency than we've seen almost since the beginning.

The problem I have with the amendment, I say to my friend from Windsor, is that the way I read the amendment it would preclude the kind of partnership that I think we need, that we're probably going to want. I've got an idea of what those partnerships might look like, but I don't expect that Her Majesty in right of the government of Ontario is going to be solely able, in operational or in financial terms, to recover that multi-billion dollar nuclear power division on its own. I'd like some help on that, Mr Lessard.

1600

In addition, this takes me back as well to the problem I have with market power, which I think is a very serious problem in the current legislation, because what the government says it wants to do and what it's proposing in legislation are not the same thing. In some ways, I think they're contradictory. Let me explain that.

The government says it wants competition but it's keeping Genco together. Because Hydro understands the contradiction that position highlights, it is saying, "We will then back away from the Ontario market to the tune of 30% to 40% and we're going to go into the United States." If you look at the testimony advanced by Mr Osborne and others, they say in that connection, and not surprisingly, "We will swap, lease or otherwise dispose of assets." That's what you're going to have to do if you're going to move out of the Ontario market to the extent of 30% or 40% to try to deal with the problem of market power.

I see this amendment as creating some very real problems there. I can imagine what Mr Lessard is thinking, "Yes, and I wouldn't do it the way they're doing it," but I see some problems around the market power issue. I understand that the member is concerned, and I think he's quite legitimately concerned, about the experience other jurisdictions have had, that deregulation is essentially code for the great barbecue, the great potlatch of very valuable

public assets that are put on the market and sold off at fire sale prices. You would not have to be very cynical to come to the conclusion, on the basis of experience outside of Ontario, that there is good, hard evidence to suggest that that is a tendency that these kinds of changes present.

But I can imagine, I say to my friend from Windsor, situations in the coming years where we might very well want to see the transfer of some assets, some of them not very large, from Ontario Hydro to local public utilities. I can imagine some circumstances where we might see the development of some local or regional partnerships that involve the asset base of either Genco or Servco that involve a partnership between two aspects of the public sector, one provincial in the name of Hydro, one local in the name of the Belleville PUC or Trent Valley PUC, if such a thing exists.

I've probably said enough, but the concern I have is that the amendment would foreclose or preclude the kind of partnerships that I think we're going to have to get, most especially in the nuclear power division, which is the great sort of sleeping — not so sleeping — dog that sits underneath all of this. I have a real problem with the amendment, because I think it would place an unfair burden on the kind of choices that whomever is responsible for Hydro is going to want to have to exercise the good judgment and the decision-making that's going to be required.

I repeat for the last time, these choices aren't going to be very pretty, and I don't want to minimize that, but I think there has to be some candid acknowledgement. Ms Johns made the point that a year ago the Power Workers' Union actually lobbied the committee and said they were interested perhaps in a partnership around the nuclear power division. I'm not so sure that I think that's a good idea, but I don't know that I'd want to just preclude it, as I think this particular amendment might do.

The Vice-Chair: Further discussion? Shall the amendment carry? All in favour? Opposed? The amendment's down.

Shall section 45 carry? Section 45 carries.

Shall sections 46 and 47 carry? Carried.

Page 36, a Liberal motion.

Mr Conway: I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following section:

"Retirement of stranded debt

"47.1 Until the Minister of Finance determines under subsection 79(6) that the residual stranded debt has been retired, all revenues of the Generation Corporation, the Services Corporation and their subsidiaries that exceed operating costs shall be paid to the financial corporation towards retirement of that debt."

This amendment reflects the testimony of some of the deputants. Looking at my notes, I think it was the association —

The Vice-Chair: Mr Conway, that amendment is out of order. Pursuant to standing order 56, "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public

funds...shall" only "be proposed by a minister of the crown."

Page 37.

Mr Conway: OK. Donna, do we really have to read these things?

The Vice-Chair: Yes, they have to be read once. They're supposed to be read twice. You've never been adverse to talking, sir.

Mr Conway: I move that the —

Mr Lessard: Maybe we should find out if it's going to be out of order first.

Mr Conway: I don't think this one is.

The Vice-Chair: You're all right so far.

Mr Conway: I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following sections:

"Hearing re single entity

"47.2(1) The board shall hold a public hearing to determine whether the ownership and operation of transmission systems and distribution systems through one or more subsidiaries of the Services Corporation has prevented or is likely to prevent some or all customers from gaining benefits that could be achieved.

"Time for hearing

"(2) The hearing shall begin after the first anniversary of the coming into force of section 45 but before its second anniversary, and shall be completed by March 30, 2002.

"Time for report

"(3) The board's report on the hearing, which may include any recommendations that the board considers appropriate, shall be made public within 60 days after the hearing is completed.

"Response

"(4) The government of Ontario and the Services Corporation shall each respond to the report and shall make their responses public within 60 days after the report is made public.

"Additional powers of board

"(5) On the completion of the hearing, the board may amend a licence or make an order in the same way as on the completion of a review under subsection 36(2) or (3).

"Further hearing, separation of transmission and distribution systems

"47.3(1) After the responses of the government of Ontario and the Services Corporation have been made public under subsection 47.2(4), the board may hold a further hearing to determine whether the Services Corporation should be required to separate the ownership and operation of transmission systems and distribution systems.

"(2) On the completion of the hearing, the board may make an order requiring the services corporation to separate the ownership and operation of transmission systems and distribution systems and may give all necessary directions in that connection."

This, for me, is again a very important issue. We had a number of presentations on this subject. This is the concern around the potential cross-subsidization within Servco of two aspects of the electricity business. There is

quite a legitimate concern that has been identified that because Servco is going to be as large and as significant as it is, there should be a firewall established between the two parts of the business so that there is not only no potential but no opportunity for cross-subsidization.

I can't imagine, since one of the principles we've talked about throughout the piece — and I think it's a principle that is fundamental to the effective working of this policy — is that there would be a level playing field, that there would be no opportunity, particularly in something as large and as powerful as Servco, to cross-subsidize.

I have actually made this amendment a little softer than I would have liked, because really all the amendment asks for is that the energy board be required within a specific time frame to hold a public hearing on whether the operation of transmission and distributions functions as a single entity is leading to uncompetitive practices in the new marketplace. The amendment sets out a time frame in which that hearing is to take place, and if in the opinion of the board there is uncompetitive or other disagreeable behaviour, the board is empowered to take the necessary next steps.

1610

I think this is a very modest proposal that we would want to embrace if we believe we want a competitive marketplace that looks like a competitive marketplace and behaves like a competitive marketplace. It seems to me that in this particular connection it is just not acceptable that we would go into the new world order allowing the Services Corp to operate transmission and distribution functions within the same operation. I would have thought that the weight of the logic of treasury bench would have made this amendment a government amendment, or made it part of the bill. I really do think there has to be a greater separation of those two functions in the interest of a properly functioning marketplace. It goes back to what Macdonald recommended, among others. It's a fairly modest proposal because all I'm asking for is that within a time frame, not later than the year 2002, the OEB have a hearing to inquire into the potential for uncompetitive practices, and should they find those practices, to order a further disaggregation of Servco along the two different functions.

Mrs Johns: I want to comment on a couple of issues that were raised by the member opposite. I think, first of all, that the section does a little more than just make sure that the transmission company keeps separate and distinct accounting records. If that was the case he would have that in clause 69(2)(f), which requires the licensee to maintain specific accounting records. We were concerned about that ourselves and so what we did was put an amendment through in section 69 of the Ontario Energy Board Act, saying that the board could ensure we had compliance with codes of conduct that would be set out in a licence. We have tried to strengthen that to ensure that there are separate and distinct records and that there's no cross-subsidization. We even took into effect affiliates in our amendment to section 69 of the Ontario Energy Board Act.

What I still see as the problem with this, and this goes back to the abuse of market power that we talked about in the generation side at the end of the last day, is that the Ontario Energy Board has this ability at any time to go in and look at the transmission company to ascertain if they're dealing within their licence requirements, if they're dealing effectively or stifling competition or anything along that line. They have the ability to do that and they can do that at the direction of the Market Surveillance Panel. They can do it as a result of the minister or any party who comes out and raises some concerns about how the marketplace is working. So the Ontario Energy Board has its authority. It is certainly our intention for them to use that authority from the time the competitive marketplace starts, or these new companies come about, right through the future, not to have to have this tiering before 2002 but to be working at this all the time. It's very important for all of us that the market is competitive and that we're allowing competition in the marketplace in both generation, transmission and distribution.

Mr Conway: I again want to make a couple of points. The language of my amendment is fairly straightforward. It simply would require that the board hold a hearing to ascertain whether or not there are uncompetitive practices occurring because Servco is going to be home to both transmission and distribution. It just seems to me self-evident that if you really believe what the government says it believes, you would want to do this as a minimum. I was reading in the *Globe and Mail* on the weekend the Alberta story about market power. Five years out it appears to be a real mess, where they're looking at buying businesses out of the pool this winter because they've got a situation where they've now got too much demand for the supply available. I won't bore you with the details if you haven't read the Saturday piece. I'm sure it doesn't tell the whole story, but this is five years out and they're having these kinds of problems. They're going to have one hell of a rough winter.

It appears to be market power. The government is trying to mitigate the market power of three big players. It's not one, but three, and not in the first year, not in the second year, but in the third, fourth and fifth year. It's a pretty interesting story. I hope some of what the reporter highlighted in the paper does not come to pass. It certainly looks like business is going to be more than a little upset.

This market power issue is critical and it's central. I think the government is right when it says, "We have got to break the monopoly." You're absolutely right on that. That's why at second reading I supported this. But the more I hear and the more I see, the less convinced I am that the instruments we're choosing to give effect to the policy are going to do nearly enough to meet the objective that I think we all share. The problem we've got is there is a monopoly, a monopoly that was never intended to be a monopoly but became one, so we want to reasonably deal with that.

I think the member from Windsor makes a good point. I'm not throwing the baby out with the bathwater. I think public power is going to continue to be an important part

of Ontario's future. I just don't think it should be the kind of public power we've seen, particularly in the post-war period.

Just think about some of that testimony we heard from people like the folks down in Sarnia and elsewhere about their concerns about Servco. In fact, at the hearings, when we had eight glorious days in August when the whole world was paying attention, I was struck by the number of people, after the hearings were over — I won't embarrass them by naming them but they're pretty powerful people, well known and well regarded by the government — who said to me: "You're not paying nearly enough attention to Servco. There's a lot more going on in Servco than I think you people understand."

I'm just a generalist, but a lot of those people were saying, "As a minimum, if you believe in a competitive marketplace, surely you want to create, and be seen to be creating, a separation between the two functions of Servco." I don't know what the argument against that would be, particularly if we're all interested in a competitive marketplace. There may be one. The minister's here and I'm delighted for it. I'd like to hear it, because where Hydro is concerned, you've got to be from Missouri. I just look at this and say, "They keep Genco together to do a variety of things." If Mr Lessard is excited now, he'll really be excited about three years from now, even more so if he's the minister.

Mr Galt: I think we'll all be very excited.

Mr John R. Baird (Nepean): There's that potential there?

Mr Conway: It doesn't matter which one of us is minister. This thing is going to be a bag of very tough choices.

Mr Steve Gilchrist (Scarborough East): I hadn't realized you were crossing the floor.

Mr Conway: That's the kind of arrogance I always like to hear, and I've heard a lot of it around here in 23 years. What is it they say? Pride goeth before a fall.

The Vice-Chair: Let's stay on the subject, gentlemen.

Mr Conway: Not only are we leaving Genco with a massive market power, but the government seems strangely reluctant to be seen to be creating some separation between the transmission and distribution functions of Servco. I'd like somebody to help me with that.

1620

Hon Jim Wilson (Minister of Energy, Science and Technology): Briefly, what we're trying to do is keep the backbone and spine of the Hydro system in this province in place, Mr Conway. To divide transmission and distribution in Servco just doesn't follow any sense, in my mind. It's the monopoly section of the services company. You want to keep it together and protect it for all Ontarians. That's what we're doing.

Mr Conway: I guess, Minister, I would have been more inclined to believe that prior to hearing Mr Osborne, but when I saw the predatory side in Mr Osborne here in early August — my friend Les is animated. I want to hear from Les because he's obviously — I'm just looking at some of the testimony. A number of the deputants dealt with this.

For me, one of the big surprises in this exercise was I thought, going into this, that what we were going to see in southern Ontario was a reduction of Ontario Hydro Retail. I think that was the view of most people. That was certainly the prevailing wisdom and seems to me to be reasonable. But we're not going to get that apparently, and we have lots of evidence in the hearings to suggest that we're not going to get that. If we're going to get an aggressive, expansive Servco, for that alone I want there to be some separation, just so there is no possibility that people are going to play games. They're certainly going to be in a favoured position to do that.

I've heard you speak into the microphone. Just do it directly. It would make it a lot easier.

The Vice-Chair: Further comment?

Mr Conway: Can somebody just respond to that?

Mrs Johns: I think you're aware, Mr Conway, that with the act the way it is, we're able to separate the retail and the distribution sides through clause (f) and other sections within the act. What we've done here is ensure that the Ontario Energy Board has more teeth, more ability to control any of that, and to ensure that the licensed codes of conduct are implemented and that Servco is meeting the requirements set out by the Ontario Energy Board.

I think what you're forgetting here, and what people forgot throughout these hearings, is that the Ontario Energy Board has become a much stronger entity. I think we heard that from the Ontario Energy Board, that they're going to be there to ensure that licensing infractions are looked after and carefully reviewed on a very timely basis.

Mr Conway: It was on August 19, 1998, at Mississauga that a certain Karl Wahl — again, no evident enemy of this government — testified as follows, reading from page 7 of his testimony: "Section 47 of the EA," the Electricity Act, "contemplates that Ontario Hydro Servco can, through its subsidiaries, include both retail and wires. Similarly, there is no requirement that Ontario Hydro Servco's transmission and distribution functions be placed in separate subsidiaries. This," he says, "is inconsistent with the expectation that MEUs will completely segregate these functions. Transparency is lost."

Mr Wahl knows this business a lot better than I do. I think he makes a good point. He wasn't the only one to make that point. Have we nothing to say to Mr Wahl? Is he completely off the beam here?

Hon Mr Wilson: I'm not going to dignify that line of questioning. Mr Wahl is on the Market Design Committee. He well knows the government's position on this.

Mr Conway: I just picked that one. There are others. This is a very common complaint about this particular provision and it seems to me not an unreasonable one. The argument the government has advanced, and I think it's not a bad argument, is the importance of transparency, the importance of a level playing field, the importance of disaggregation, particularly for MEUs. Those are arguments that I think are important, and yet when we look at Servco, it's getting a different treatment. It's a very big player going into this.

Hon Mr Wilson: Servco, Mr Conway, gets treated the same as the local MEUs in terms of distribution separation from retail competitive businesses. There's absolutely not two rules here. Your amendment, with all due respect, doesn't make sense. Perhaps it's a misinterpretation of what some of these witnesses said.

Mr Conway: My amendment is very straightforward. The amendment simply says that I want the energy board to have a hearing two years into the competitive marketplace. That's why the amendment is so tame. It simply says that there be a requirement that the regulator have a hearing to decide whether or not, in the early going, there is any behaviour on the generation company that would give some concern about anti-competitive practices. With all due respect, I say to my friend the minister, that is a pretty straightforward, fairly tame amendment. I think your charge may be more aptly put to some of my other amendments. I think this one this one, seriously, is a —

Hon Mr Wilson: I've tried my very best to entertain as many of your amendments as possible; it's just that they have to be consistent with the consensus that has been reached in this province. The parliamentary assistant, Mrs Johns, has already made it clear that the Ontario Energy Board can have a hearing at any time. We don't need to set dates on two years down the road. Certainly it's in the interest of customers, to ensure there is no cross-subsidization, that the Ontario Energy Board should be free at any time to have a hearing, 24 hours a day, 365 days a year. That's what this bill allows, should they so desire.

Mr Lessard: When we started out on this, when the bill was first introduced, one thing we were all consistent with respect to was that we were interested in having competition in the energy market in Ontario. We're also interested in having lower price and I know that the minister said that on more than one occasion and in fact put that in the title of the bill. We've had this debate about having that sort of protection in the objects of the bill; however, the government members don't seem to be inclined to be interested in putting that in the bill, for whatever reason.

I understand the minister's expression of willingness to consider seriously the amendments, not only by my friend Mr Conway but by the NDP as well. However, we've been at this, starting the third day now, and not one of our amendments has been considered seriously as yet and I don't expect that is going to change before we're finished.

I think the amendment that's been put forward by Mr Conway is a very reasonable one. It really deals with the consistent criticism we heard with respect to this bill, and that was the fear that we weren't going to end up with a competitive market after this legislation was passed. This requires that the Ontario Energy Board have a hearing to consider that. I think that's a reasonable request so there is some review later on down the road to address those concerns. I think it would give everybody a lot of comfort if the Ontario Energy Board were charged to address the concerns we heard consistently that this wasn't going to lead to a competitive energy market.

It ensures there is some transparency. We heard from the MEUs. They were critical about there being different rules for Servco than for them. They were concerned about market power for Servco as well. I think the member makes a good point about that, in order to have some transparency, to have some comfort for the people who raise those concerns. Mr Conway and I were here to hear every one of those people as they made their presentations. Many of them had a great deal of expertise and experience when they made those points, and I think that to ignore them, we do that at our peril.

The Vice-Chair: Further comments?

Shall sections 47.2 and 47.3 carry? Opposed?

Mr Gilchrist: Sorry. Section or amendment?

The Vice-Chair: These are new sections, 47.2 and 47.3. They're new sections and we will either adopt them or drop them in their entirety. Opposed?

On to page 39, a government motion.

1630

Mrs Johns: These are finance amendments that are happening now. As we have already agreed, I'll be reading the motions and the parliamentary assistant to finance will be talking about them.

The Vice-Chair: Section 48: Shall sections 48, 49 and 50 carry? Carried.

Now we're at subsection 51(3).

Mrs Johns: I move that subsection 51(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by inserting "Despite subsection 2(3) but subject to the regulations" at the beginning.

The Vice-Chair: Comments?

Mr Baird: This amendment would simply give the regulatory power to change the name "Ontario Hydro" in a good number of other acts, a good number of private acts, for example, which contain the name "Ontario Hydro."

The Vice-Chair: Other comments?

Shall the amendment carry? Carried.

Shall section 51, as amended, carry? Carried.

Mrs Johns: I move that subsection 52(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "and" at the end of clause (c) and by adding the following clauses:

"(c.1) exercising and performing powers and duties under part VII;

"(c.2) effecting financings, including establishing trusts, corporations, partnerships or other entities for that purpose; and."

The Vice-Chair: Comments?

Mr Baird: This would do two things: One, it would allow Finco as the successor to Ontario Hydro for an interim period to act as the pension plan organizer for the two successor companies until those pension plans can be transferred to the new corporate entities; as well, it would authorize securitization if the new board saw fit to choose that financial instrument.

The Vice-Chair: Further comments?

Shall the amendment carry? Carried.

Shall section 51, as amended, carry? Carried.

Where did they get that one, section 52? All right.

Shall section 52, as amended, carry? Carried.

This is my first time with clause-by-clause. I can run any kind of a meeting, but this stuff is —

Mr Conway: You're doing very well, Mr Chair.

The Vice-Chair: Thank you very much, sir. I appreciate that. Next?

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Property interests belonging to the crown

"53.1(1) Any interest of the Financial Corporation in real property that is not transferred under part X belongs to Her Majesty in right of Ontario.

"Financial Corporation may administer and dispose

"(2) The Financial Corporation may administer, deal with and dispose of any interest referred to in subsection (1) as the agent of Her Majesty in right of Ontario and section 58 applies to any revenues received by the Financial Corporation in that capacity.

"Rights under s. 43

"(3) For the purpose of this section, an interest in real property includes a right referred to in subsection 43(1)."

The Vice-Chair: We're going to go back to section 53. While I was being congratulated, you jumped in and took a step ahead.

Mrs Johns: I'm sorry.

The Vice-Chair: That's fine.

Shall section 53 carry? Carried.

Debate on 53.1?

Mr Baird: This simply clarifies that Finco is an agent of the crown.

The Vice-Chair: Further comment?

Shall the new section 53.1 carry? Carried.

Page 42, a government motion.

Mrs Johns: I move that section 54 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

"Former directors cease to hold office

"(7) A person who was a member of the board of directors immediately before subsection (2) comes into force ceases to be a member of the board of directors when subsection (2) comes into force, but nothing in this subsection prevents the person from being reappointed."

The Vice-Chair: Comments?

Mr Baird: This just clarifies that Finco, as a successor company to Ontario Hydro, is going to be dealing with a rather small part of the operation that is currently done by Ontario Hydro and that the old members of the board would not continue on the new board, which is a very small mandate compared to the existing board.

The Vice-Chair: Further comment?

Shall the amendment carry? Carried.

Shall section 54, as amended, carry? Carried.

Sections 55 to 58: Shall they carry? Carried.

Mr Conway: On that, again I want to make a note. My impression is that this is a much more important aspect in this policy than the committee has understood. I don't think we've spent any time at all in the eight days hearing very much about Finco. I just, for the record, want to say

that I suspect within a few years' time that oversight will probably be noted, because my impression is that this is a much more important proposition than the Legislature understands. Next?

The Vice-Chair: Noted, thank you.

Page 44.

Hon Mr Wilson: I move that section 59 of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Special purpose account

"59(1) If the Lieutenant Governor in Council authorizes Her Majesty in right of Ontario to assume obligations under clause 112(1)(a), the Minister of Finance shall establish a special purpose account in the consolidated revenue fund for the purposes of this section.

"Dividends

"(2) Dividends paid to Her Majesty in right of Ontario in respect of shares of the Generation Corporation and the Services Corporation shall be paid into the account, less any amount that the Minister of Finance considers is required to pay obligations assumed by Her Majesty under clause 112(1)(a).

"Payment to Financial Corporation

"(3) Money paid into the account shall be paid out, at such times as the Minister of Finance may direct, to the Financial Corporation.

"Closure of account

"(4) Before this part is repealed under section 81, the special purpose account shall be closed and any money remaining in the special purpose account shall be paid out to the Financial Corporation."

The Vice-Chair: Comments?

Mr Baird: This amendment, in some direction, maybe goes back to both what Mr Lessard said earlier and Mr Conway's amendment, which was deemed out of order, in that it does address the concerns Mr Conway made in his amendment to 47.1 with respect to dedicating, albeit not as broad as Mr Conway suggested but perhaps a little bit more focused with respect to the dividends, that the dividends shall go to Finco to pay off the stranded debt, which is something that was brought up by a good number of presenters and it was a degree of taxpayer protection in this legislation which was some of what Mr Conway brought up in his earlier amendment.

The Vice-Chair: Further comments?

Mr Conway: I appreciate that. Let's come back to that, then. What is the scope of this amendment? I come back to page 36, my amendment which was ruled out of order. That amendment essentially would have directed that as long as there was a residual stranded debt to be retired, all of the revenues net of operating expenses of Genco and Servco would have been paid to Finco towards the retirement of that residual stranded debt.

The member for Nepean says that this amendment addresses that concern. It is not as wide in scope as my amendment which was ruled out of order. Just to be clear, what is the difference in terms of the scope of this amendment versus the one I offered which was ruled out of order? In other words, what's allowed to Finco in this

amendment that was not allowed in the one that was struck down because it was out of order?

Mr Baird: I guess the difference would be between net income and dividends. If money would be leaving the company, would be leaving Genco, for example, in the form of a dividend, the government felt, as did a number, if not all, of the members of the committee and a number of presenters, that money should be dedicated by law towards paying off the stranded debt rather than going into the black hole of the consolidated revenue fund, to someone who might not want to pay off stranded debt with it. Your amendment was more broad, dealing with net income.

We all support the idea of competition, but the competition will require Genco and Servco to operate in a commercial environment, and they wouldn't be commercial companies if by legislation we would be making decisions on their boards in terms of what they do with net income. We are saying that if the money is coming out of the corporation in the form of a dividend, it would have to go to Finco to pay off that stranded debt, which goes a long way towards dealing with the concern you expressed in 47, in terms of your proposed amendment. It certainly was something I advocated quite strongly on as a degree of taxpayer protection. Perhaps it's self-evident and wouldn't be required, but why not wear a belt and suspenders on this one?

1640

The Vice-Chair: Further comment? Shall the amendment carry? Carried.

Shall section 59, as amended, carry? Carried.
Section 59.1.

Hon Mr Wilson: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Corporations to hold shares

"59.1(1) The Lieutenant Governor in Council may cause corporations to be incorporated under the Business Corporations Act for the purpose of acquiring and holding shares in the Generation Corporation and the Services Corporation.

"Same

"(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the executive council designated by the Lieutenant Governor in Council.

"Crown agent

"(3) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes.

"Dividends paid to crown agent

"(4) If an agent of Her Majesty in right of Ontario is paid dividends in respect of shares of the Generation Corporation or the Services Corporation, the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed under clause 112(1)(a)."

The Vice-Chair: Comment?

Mr Baird: This is a complementary amendment to the last one, dealing with the debt-equity swap and the issue of dividends to Finco.

The Vice-Chair: Further comment?

Shall section 59.1 carry? Carried.

Shall section 60 carry? Carried.

Government motion, subsection 61(4).

Mrs Johns: I move that paragraph 1 of subsection 61(4) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"1. Throughout the specified period, the Financial Corporation may issue, reissue, renew or replace securities issued under the order during the period if the maximum aggregate principal amount of the securities issued under the order and outstanding from time to time does not at any time exceed the maximum principal amount specified in the order."

The Vice-Chair: Comment?

Mr Baird: This is just a minor wording change; a few words were left out. What we wanted to do with respect to the short-term borrowing authority of Finco was simply to mirror the province's own short-term borrowing authority that's in the Financial Administration Act.

The Vice-Chair: Further comment?

Shall the amendment carry? Carried.

Amendment to subsection 61(5).

Mrs Johns: I move that subsection 61(5) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "by way of loan" in the fifth line.

The Vice-Chair: Comment?

Mr Baird: This amendment was required to clarify that Finco's borrowing under this section, which includes revolving and borrowing from the bank, is a little bit too restrictive and should be broadened. There are other instruments in terms of borrowing, whether it's a bank overdraft, and this just allows it to be less restrictive.

The Vice-Chair: Further comment?

Shall the amendment carry? Carried.

Shall section 61, as amended, carry? Carried.

Subsection 62(1).

Mrs Johns: I move that subsection 62(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Province may purchase securities, etc.

"(1) The Lieutenant Governor in Council may by order authorize the Minister of Finance to purchase securities of or make loans to the Financial Corporation at such times and on such terms and conditions as the minister may determine, subject to,

"(a) the maximum principal amount specified by the Lieutenant Governor in Council that may be purchased or advanced or that may be outstanding at any time; and

"(b) any other terms and conditions that are specified by the Lieutenant Governor in Council."

The Vice-Chair: Comments?

Mr Baird: This would simply allow the province to become involved as the maturity of the existing Ontario Hydro debt comes up. It would allow some cash-flow operations through the province, but there would be no net

new financing from the CRF. It's just basically a cash-flow issue.

Mr Lessard: I'd like to know how this is supposed to operate in principle. I understand Mr Baird's comment, but what restrictions are there on that statement you made, that there wouldn't be any new funding? I don't see that in this section. Through this change, it could authorize the Minister of Finance to purchase securities up to a maximum amount. That's set wherever the government of the day happens to set it.

Failure of sound system.

Mr Baird: — could assist Finco in terms of the repayment of those bonds.

The Vice-Chair: Pardon me. We were having trouble with the mikes. We're not having trouble with the mikes now. Carry on, John.

Mr Baird: Basically this would permit Finco to fund timely repayments of existing Ontario Hydro debt remaining with Finco, just strictly cash flow. Perhaps I could look to the officials. If the province wanted to lend Finco an excess of money, the province is the sole shareholder of Finco, so I suppose —

Ms Malle Hanslep: The change permits an order in council to authorize the borrowing up to a maximum amount, and it just clarifies that it can be a maximum amount that can be outstanding at any time, and it's to fund short-term timing mismatches in borrowing. It's not really changing the amount that can be put in; it's clarifying that it could be a revolving amount.

The Vice-Chair: Further comment?

Shall the amendment carry? Carried.

Shall section 62, as amended, carry? Carried.

Shall section 63 carry? Carried.

Government motion, subsection 64(1).

Mrs Johns: I move that subsection 64(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Guarantee and indemnity

"(1) The Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify,

"(a) any debts, obligations, securities or undertakings of the Financial Corporation or a subsidiary of the Financial Corporation; or

"(b) any debts, obligations, costs or undertakings of any other person arising in connection with a guarantee or indemnity given under clause (a)."

The Vice-Chair: Comments?

Mr Baird: This deals with the refinancing of their existing debt. This section was contained in most contracts and is just with respect to the liability to pay costs.

Mr Lessard: I have a question. I'm wondering if this is a back door to guaranteeing Genco and Servco debt. I'm not really clear as to why that change is being made, whether it's adding further debt or causing the government to guarantee some debt that wasn't guaranteed before.

Mr Baird: It deals just with Finco and an affiliate of Finco, not with Servo or Genco.

Mr Lessard: The section says, "agree to guarantee or indemnify any debts...of any other person."

Mrs Johns: Arising in (a), which is Finco and a subsidiary of Financial Corp.

Mr Baird: It's not an unreasonable question.

The Vice-Chair: Further comment?

Shall the amendment carry? Carried.

Shall section 64, as amended, carry? Carried.

Shall sections 65, 66 and 67 carry? Carried.

Section 67.1.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Entities established for effecting financing

"67.1 In addition to the restriction in subsection 67(1) on establishing subsidiaries, the Financial Corporation may establish a trust, partnership or other entity in Ontario or elsewhere for the purpose of effecting a financing only with the approval of the Minister of Finance."

The Vice-Chair: Comments?

Mr Baird: This is a complementary amendment to the second finance amendment we dealt with at subsection 52(1), basically requiring the authorization of the minister before entering into a securitization.

1650

Mr Conway: I'd like to have that explained. I want to hear a bit more about that, maybe from Steve.

Mr Steve Dorey: You may know the experience in some other jurisdictions, particularly California and some of the US jurisdictions, has involved taking stranded debt recovery and turning those into financial instruments that get the government the cash up front and allow that to be collected over a period of time. That securitization is simply a financial instrument to make the collection more efficient.

Mr Conway: There's been some very heated controversy in the United States about that whole securitization question, as I recall. I think of the Connecticut debate this spring. There were a lot of consumer groups that were very interested in how that was going to be done and what it was going to mean to their residential bills.

Mr Dorey: Yes, I think principally the controversy has been over whether the ratepayer should pick up the full stranding or whether that should be shared with the private owner of the utility. In the Ontario context, that's not really an issue because taxpayers and ratepayers by and large are the same people.

The Vice-Chair: Further discussion? Shall section 67.1 carry? Carried.

Shall sections 68, 69, 70 and 71 carry?

Mrs Johns: I have an amendment to section 71.

The Vice-Chair: You're correct. Just to section 70. Carried.

Subsection 71(1).

Mrs Johns: I move that subsection 71(1), (2) and (3) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Liability

"(1) No action or other civil proceeding shall be commenced against a director, officer, employee or agent of

the Financial Corporation or a subsidiary of the Financial Corporation, or of an agency of the crown specified in a directive referred to in subsection 68(3), for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this act, the regulations or the bylaws of the corporation or subsidiary, or for any neglect or default in the exercise or performance in good faith of such a power or duty.

"Declaration under subsection 67(2)

"(1.1) Subsection (1) does not apply to any act, neglect or default in respect of a contract, security or instrument with respect to which a subsidiary of the Financial Corp has made a declaration in accordance with subsection 67(2).

"Actions against crown

"(2) No action or other civil proceeding shall be commenced against the crown for any act, neglect or default by a person referred to in subsection (1) or for any act, neglect or default of the Financial Corporation, a subsidiary of the Financial Corporation or an agency of the crown specified in a directive referred to in subsection 68(3).

"Same

"(3) Subsections (1) and (2) do not relieve the Financial Corporation, a subsidiary of the Financial Corporation or an agency of the crown specified in a directive referred to in subsection 68(3) of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1)."

Mr Baird: It basically extends the crown employees' indemnity that exists for Finco to the subsidiaries to public servants who are acting in good faith, so you would sue the corporation or the province and not the individual or crown employee.

It's found in a good number of statutes. This amendment simply extends it to the subsidiary corporations as well.

The Vice-Chair: Further comment? Shall the amendment carry? Carried. Shall section 71, as amended, carry? Carried.

Shall sections 72, 73, 74, 75, 76 and 77 carry? Carried. Subsection 78(2).

Mrs Johns: I move that subsection 78(2) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "used exclusively for executive and administrative purposes" in the fourth and fifth lines and substituting "used exclusively for executive, administrative or commercial purposes."

Mr Baird: Let's use the example of a building that's now with Ontario Hydro. If it were to stay with Finco, they would continue to have to pay the existing payments in lieu to the local municipality. So, should there be the odd piece of property, a building, for example, which stays with Finco and not with Genco or Servco, they're required to pay the existing PILs to the local municipality.

The Vice-Chair: Further comment?

Mr Lessard: The change, as I see it, to this section adds the word "commercial" to the purposes that may be

undertaken. I'm wondering what sorts of commercial purposes may be anticipated. Why is that word being added in there? What commercial undertakings might Finco be involved in?

Mr Baird: The existing wording says "executive and administrative." We're simply trying to clarify that they continue to be treated like other commercial properties.

Mr Dorey: I think the intent is to cover warehouses, actually, which are neither administrative nor executive.

Mr Lessard: Finco warehouses?

Mr Bill McLean: The transition period between when the offices of Ontario Hydro are rolled into the Ontario Hydro Financial Corp — there's a period of time between that time and when they're finally rolled over to Genco and Servco. Section 78 ensures that municipalities will continue to receive their current payments in lieu of taxes that you saw under the old Power Corporation Act. Ontario Hydro used to pay property tax payments in lieu on their commercial warehouses. Now that they're going to be a competitive private corporation, the statute is being tightened up to ensure Hydro continues to pay it on their warehouses.

The Vice-Chair: Would any of the staff, please, when you're speaking, give your names so that Hansard can have a record.

Any further comment? Shall the amendment carry? Carried.

Subsection 78(3).

Mrs Johns: I move that subsection 78(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Same

"(3) In addition to the amounts payable under subsection (2), the Financial Corporation shall pay in each year to any municipality in which are situated generating station buildings or structures or transformer station buildings or structures owned by the Financial Corporation, an amount equal to the taxes for municipal and school purposes that would be payable if the buildings or structures were taxable and the assessed value were determined on the basis of \$86.11 for each square metre of inside ground-floor area of the actual building or structure housing the generating, transforming and auxiliary equipment and machinery."

Mr Baird: Some may argue that transformer stations are not buildings. This would simply seek to capture what is now captured, by adding "or structures" for transformer stations.

The Vice-Chair: Other comment?

Mr Lessard: Just what exactly is the change that's being made in this section? I just haven't had a chance to compare it.

Mrs Johns: "Or structures" in line four and in the second-last line.

Mr Lessard: So it's just adding structures.

Mr Baird: Some could argue that, for example, a transformer station is not a building. We wanted to capture what was already captured so we're just adding to it to cover transformer stations.

Mr Lessard: My other question is with respect to that amount, \$86.11, for each square metre of inside ground-floor area. Is there somebody who could explain to me how that amount was determined? It just seems like a figure, and in all the briefings we've got there's been no explanation for it. I'm curious as to why there's a specific amount in this section and where the number came from.

Mr McLean: I'm Bill McLean from the Ministry of Finance.

The existing Power Corporation Act today, for the past 30 years, in fact, has had a way of treating the values of Ontario Hydro properties: generating stations and transformer stations. This has been a method upon which Hydro has made its grants in lieu of property taxes to municipalities. The current Power Corporation Act states that every square metre of generating and transformer stations is worth \$86.11. When you take the municipal tax rate in each municipality, you apply the municipal rate to the amount, \$86.11, on the number of square feet and you get the amount of grants in lieu of taxes that Hydro pays to the individual municipality.

Bill 35 replicates that treatment. It doesn't change that treatment. It continues the \$86.11 assessment for Hydro properties to ensure that municipalities receive no less municipal revenue than they have had in the past.

1700

The Vice-Chair: Further comment? Shall the amendment carry? Carried.

Subsection 78(14).

Mrs Johns: I move that subsection 78(14) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by inserting "or structures" after "buildings" in the fifth line.

Mr Baird: This is a complementary amendment to the previous one, just by adding "or structures" for the same reason.

The Vice-Chair: Other comments? Shall the amendment carry? Carried.

Shall section 78, as amended, carry? Carried.

Subsection 79(5.1) and (5.2), a Liberal motion.

Mr Conway: I move that section 79 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following subsections:

"Identification of charge

"(5.1) All bills to consumers shall show charges made under subsection (5) separately and identify them clearly.

"Purpose of competition transition charge

"(5.2) Payments that the Financial Corporation receives under subsections (4) and (5) shall be used only to reduce the stranded debt."

The second part would probably be out of order.

The Vice-Chair: That makes the amendment out of order.

Mr Conway: Is there any way that I can simply introduce the first, (5.1)? There is a way, actually.

The Vice-Chair: Are you waiting for an answer to that or did you get one?

Mr Conway: I know the answer. I'd like unanimous consent to reintroduce the amendment by simply reading

(5.1). Agreed? Not agreed. All right. The government denied consent, so that's fine.

The Vice-Chair: Fine. They already said no.

Mr Conway: I want to speak to the section.

The Vice-Chair: We're still on section 79; yes.

Mr Conway: Section 79 is quite an impressive piece of work if one looks at it. It's in this section that we see the definitions for such things as "residual stranded debt." We observe the very powerful authority being given to the Minister of Finance in subsection 79(2). Following that, we see in subsection 79(7) — I always like to highlight this when I see it in legislation — "The determination of the Minister of Finance that the residual stranded debt has been retired is final and conclusive and shall not be stayed, varied or set aside by any court."

The Legislature is being asked here in section 79 to give to the Minister of Finance extremely sweeping powers that have everything to do with defining some extremely important matters, to deciding schedules, time-tables. Then, to make very sure that the imperial authority of the minister is not going to be attacked, we have the cut-off to any court in regard to appealing the decision.

I must say that I am troubled by that, not because I don't want the Minister of Finance to have power — I think it's a given that the Minister of Finance should have power — but one of the concerns a number of people have had is the conflict of interest in which any Minister of Finance is going to find himself in respect of this particular policy. Remember what we're talking about here. We're talking about the residual stranded debt, which I think even Mr Dorey has acknowledged in some of the paper here is going to be a multi-billion dollar figure. How it is determined, how it is apportioned, what happens to the revenue streams built to retire it after it's retired, these are going to be very important decisions, particularly for the residential and farm electricity consumers.

One of the deputants, the consumers' association, made a point that in this area there should be as much transparency as possible so that the broad customer base would have a clear, ongoing understanding of what was being decided, in what particular manner and to what effect. I just want to make the point, since the amendment has not proceeded, that I think transparency is important and that the committee would do well to find a way to ensure that the customers, particularly the broad residential and farm base of customers, have some clear, ongoing mechanism to see on their bills what they're paying, what kinds of special charges are being applied and what they mean to individual ratepayers.

I'm always troubled when I see ministers requesting the Legislature to save them from any attacks of the courts. That should be, in my view, deemed as an extraordinary power. I generally don't like it, and when I see it — it appears at least in one other place in this legislation — I have to ask myself the question: So we're not going to have anybody review this? The minister is going to make that determination, and once he has determined that the debt is retired, that determination "is final and conclusive and shall not be stayed, varied or set aside by any court."

My concern here is that this is another one of those cases where the umpire is not neutral. This is an umpire with a very real pecuniary interest in that decision; and not to be repetitive, but I never like the game where the umpire has a keen, deep and pecuniary interest in a call, in a judgment, because I think that's not healthy.

Mrs Johns: I'd just like to comment on a couple of things the member opposite has said. I think it's important to recognize that we're talking about the Financial Corp here, and of course it's a crown agency — I think that was set out very clearly in one of the amendments the government made prior to this — so it's subject to the auditor and it's subject to review of the financial statements. It's important to recognize that there are options here that are important.

The second thing to recognize is that when you're talking about transparent billing, many of us will choose to use different distributors, transmitters, people to provide our power, and we can demand that from those people as we decide how we're going to choose our electricity in the future. Part of the competitive market, of course, is that some people will want more information than others and they will search for people who will give them that information.

I was up at North Bay Hydro the other day. They're starting right now to look at specific machines that will tell exactly the time of day when power is being used and they're going to be able to tell the price at that point. So people are going to meet consumer needs without our legislating that. They're going to meet those needs because it's going to be demanded by the consumer.

1710

Mr Lessard: Once again the parliamentary assistant is prepared to place all of her faith in the marketplace. I don't share the statement of faith that the market is going to take care of all consumers' needs, especially the needs of small farm and residential consumers who aren't going to have that clout in the marketplace to be able to benefit from low-cost rates that are promised by this government; promised in the title of the bill, in any event, but not in the objects of the bill.

My comments about this section are based on the fact that I think this section is really critical to determining whether the plan that this government has with respect to competitive energy, lower-cost energy and the new marketplace for electricity is going to work because it defines what is residual stranded debt if you find what is stranded debt, and we've heard from a number of presenters that the determination of that amount of stranded debt is really critical to the success or failure of the future Ontario Hydro.

I asked a number of people the question, what happens if the stranded debt amount is guessed to be too high or too low, and the answers were about as varied as the number of people whose opinions I asked, which leads me to believe that we're heading into some very uncharted waters. I think this legislation is really a framework. It's a mere skeleton of this government's policy; it doesn't have a lot of details in it. As we've said on numerous occasions

in debates with respect to this bill, "The devil is really in the details," and one of the most critical details is the residual stranded debt and the stranded debt.

Subsection (2) says that the determination of that amount is going to be done by the Minister of Finance in accordance with the regulations, regulations that I certainly haven't seen. I don't know whether my friends in the Liberal caucus have seen them, but it would provide us with some comfort if we had some idea of how the stranded debt is going to be determined, what those regulations set out and how it's going to be determined.

One of the other concerns I have is how these competition transition charges are going to be imposed. We had comments from people who presented before the committee that it only applies in subsection (4) to people who generate electricity in Ontario, and people who generate electricity in Ontario were concerned that this didn't apply to people who generate electricity outside of the province.

We've heard as well from the parliamentary assistant that even though there is the option of applying the charge to power generated in Ontario, hence power consumed in Ontario, that this wouldn't be expected to be a double charge, that you wouldn't be able to pay twice. But there isn't any protection in this section to prohibit that possibility from arising.

Mrs Johns: Can I just say that in our clause 80(1)(k) amendment we think we've solved that problem.

Mr Lessard: I'm not quite finished, but I look forward to seeing that section.

Mrs Johns: It's the next one; you'll see it.

Mr Lessard: But I guess the final comment I have with respect to this section is the one that's raised by Mr Conway, and that is the fact that it really puts the minister in a position where when he makes this call with respect to whether residual stranded debt has been retired, he puts himself in a position that is above the law. That's something that does cause me some concern.

Let me continue and say —

The Vice-Chair: We don't have to use up any particular amount of time, Mr Lessard.

Mr Lessard: That concern just leads me to the question, why? Why is that section in there like that putting the minister in that position?

Mr Conway: I want to come back to a point that Ms Johns made about what individual consumers are likely to do, and I think she's absolutely right. The only problem I have is that on several occasions in the last two or three days when we have come up to a point that I thought was fundamental, the government seems very reluctant. They say they're for promotion of lower-cost electricity but they will not put it in the purpose clause of the bill.

We've had the consumers' association ask us, on behalf of the largest group of consumers in the province, why not amend this legislation in the interests of transparency to allow the broad base of customers, the largest group of customers, to see how these special charges impact on their bills? That seems like a very good idea because I thought we were for transparency.

I was chuckling when you were saying you were at North Bay Hydro. I presume Mr Wills was there. I was just rereading his testimony the other day, and he certainly doesn't think that we're going to be delivering the goods to the customer base that he serves. Reading from his testimony of August 13, I think in Sudbury, he says, "Ontario Hydro has made it clear that it believes competition in electricity is in the northeastern US markets, not in Ontario." Roughly translated, what this statement really means is that Ontario Hydro can compete in the export market as long as the working stiff's back home can be suckered into paying the bill. That's from North Bay Hydro. I don't know whether he has talked to the local member or not; that's harsher language than I've even used.

But my point here is that I thought we were for transparency. It seems to me that, particularly during that period of time when we are writing down that stranded debt, whatever it is, that in the interests of good consumer education and good consumer awareness and good consumer protection, we would want to show people what these special charges mean to their bill.

Just as a final point, I want to remind people of something I said during the earlier part of the process. The member for Huron reminds me that we're talking here about the Financial Corp. Of course, we are; I can read and 79(7) is pretty clear. It's a very important point. "The determination of the Minister of Finance that the residual stranded debt has been retired is final and conclusive and shall not be stayed, varied or set aside by any court." That is a pretty powerful sanction given to the Minister of Finance.

Let me just remind you again about a very important issue, an absolutely core issue, ie, what the Minister of Finance is in part empowered to do under this legislation, Bill 35. Under the powers of the Minister of Finance in Bill 35, I'm just going to enumerate a half-dozen:

The minister shall appoint the Finco board of directors, including the chair and the vice-chair; the Minister of Finance may declare any Finco, Financial Corp, bylaw to be void unless he approves it; the Minister of Finance may issue binding directives to the Financial Corp; the Minister of Finance will define the size of the stranded debt that Ontario Hydro will leave behind; as I've already indicated in section 79, the Minister of Finance will decide when that stranded debt is deemed to have been retired; the Minister of Finance will determine the amount of payments that the successor companies, Genco and Servco and the MEUs, will make to the Financial Corp.

Those are pretty sweeping executive powers. There's part of me that thinks this is a Conservative government that's doing this for reasons it undoubtedly believes in. This is a massive accretion of executive power to the Minister of Finance. Thanks to subsection 79(7), you're cutting off any appeal from the exercise of some of that power to any court. Power to the people? Wow. Power to the Minister of Finance.

Since I'm a bit of a centralizer there's a part of me that understands this. I just have a problem thinking about

where it's coming from. But then Thomas Jefferson believed in limited government and signed the Louisiana Purchase, so I suppose it's not the first time that people say one thing and do something precisely otherwise.

1720

Mr Baird: Your last comment reminds me, and the previous comment with respect to transparency, I just dim my eyes and see Michael Wilson and Brian Mulroney talking of the need for a transparent sales tax. I regret I don't have my little chart showing that we're already paying the existing debt through our hydro bill. That's obviously not transparent. I suppose one could argue that we should provide greater transparency. I suppose taking that argument to its extreme we could even classify what the sales tax — to be clear, of the eight cents of sales tax you bring in, four of those cents are going to pay the interest on the NDP debt or two cents are going to pay off Bill Davis's debt or one cent is going to pay off David Peterson's debt. We haven't been quite so transparent on that part.

Going to 79(7), just a question for my colleague Mr Conway: Maybe he could give me an example so I could better follow his argument as to what would be a reason why someone — the key part of 79(7) is "has been retired," so once the minister has said the debt has been retired, maybe you could just help illuminate this for me. What reason would there be why someone would want to, after it has been retired or is declared to have been retired?

Mr Conway: The point I made before is that if you look at the process here, we've got a situation where there is going to be a calculation around what the commercial companies can carry in terms of debt-equity ratios, what they will take away with them and what will be left behind. It's what's left behind that, first of all, will be determined under this proposition by the Minister of Finance. How large is that going to be? That's the residual stranded debt.

The difference between the point you were making a moment ago and this current situation is that there's a real equity issue here. One of the questions that I want to satisfy myself with is, will all classes of customers be positioned after valuation day to pay their fair share of whatever debt is left behind? That gives me very real —

Mrs Johns: But what you're concerned about isn't going to solve that, because it's after the debt's retired.

Mr Conway: Yes, it's after the debt is retired but, remember, there's valuation, then there's this debt. The way that debt is going to be written down is presumably by the application of that bundle of special charges. We don't know what that is yet, but we know that there is a menu of five or six items, including the CTC. It will be the application of that menu — correct me if I'm wrong — that will write down the debt. Correct?

Mr Dorey: That's absolutely correct.

Mr Conway: I'm a residential customer, and if they've been paying any attention to this hearing, they will have heard the big boys and girls in here saying what they don't want. There are certain items on that menu that are a lot

more distasteful to some people than others. What I want to know is, first, to the greatest extent possible, will there be truth, fairness and equity, or reasonable fairness and equity, in the writedown of whatever debt there is? To know that, I need to know, first of all, how the menu is applied.

Mr Baird: This is after that, though.

Mr Conway: It's after, I suppose. I'm talking about from valuation day until the end of debt.

Mr Baird: But this is after the end of debt, and (7) is the specific one you raised. I'm just trying to think of an example.

Mr Conway: The determination of the Minister of Finance that the residual stranded debt is then retired is final. He decides when the residual stranded debt is finished.

Mr Baird: But this is after that. This is "has been retired," so this is after he's done that.

Mr Conway: I just look at that and say, "The Minister of Finance" — what does the language say? It's (6) and (7). "When the Minister of Finance determines that the residual stranded debt has been retired," he shall publish the notice, and that determination is final and non-appealable.

My point is, first, I think this is so clear that I'm concerned that it's not clear to others. The minister makes that determination. Remember, under the terms and provisions of the so-called level playing field for taxation — even Mr Dorey has acknowledged this — once that's done, certain other things start to happen. There's a revenue stream that's available to the Minister of Finance.

In that sense, let's say I'm the Minister of Finance. I make that determination. It's not as if when the determination's made, that's the end of it and there's no implication on my world. There's a very substantial implication on my world. I will now be in receipt of substantial new revenues, so I've got a real interest. I'm not without an interest in this decision. I raise that because that will potentially, and I think it's more than just a potential, have a very real impact on — well, say it.

I'm not going to belabour the point, except it's a very central one as far as I'm concerned. The Minister of Finance has very substantial powers here. He makes a critical determination and it's non-appealable. Once the determination is made that the residual stranded debt is retired, the Ontario treasury will find itself in receipt of substantial new revenues, of what amount we don't know, but Mr Dorey himself, in his testimony back in August — everybody's looking at me.

Mr Baird: I don't mean to belabour this point but if the minister, after he has said the debt is paid off — I appreciate your argument that he could say it's paid off earlier, so he could get potentially additional revenue from PILs, not from the end of the CTC. But there are the bondholders, who are not going to go away. It's not like he could just make it disappear by saying it's gone. If Finco still has obligations, they're not going to go away by the end of a determination, so for him or her to make a premature one, I just don't see the rationale.

Mr Conway: Maybe we can deal with this in my amendment to 81. It might be a more appropriate place. Anytime I see that kind of language, and when I see it in the case of a referee with such a stake in the game, I just think it bears some observation.

I come back to the point that the member for Nepean made. I expect that not everybody is going to be treated fairly in this. The lobbying that has already gone on, and that will continue to go on, to influence the treatment of different categories of ratepayers is going to be fierce.

This is quite apart from your government, but five or six years ago some of the big players went to Ontario Hydro and said, "Listen, you either cut us a special deal or we're jumping the fence," and, trust me, deals were made. That's the power of politics that the chairman was talking about the other day in terms of volume discounts and whatever. Don't think for a moment that game's not going to go on when it comes to the other side of this equation, what certain people are willing to pay and not pay in terms of their share of the stranded debt.

There is, to me, a very real question as to what the financial architecture is going to look like around the application of the various instruments to retire that debt. That's the point I was getting at. I certainly don't expect everybody to get equally treated. Quite frankly, if the history of these things is any example, there will be enormous pressure to dump a disproportionate share of this burden on to the backs of the two or three million residential customers. That's where it'll go. That's where the market dynamic will put it because you don't need to put a very large charge on so large a group to get the yield.

1730

The Vice-Chair: Further comments?

Shall section 79 carry? Carried.

Mrs Johns: I move that clause 80(1)(k) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"(k) exempting persons or classes of persons from subsection 79(4) or (5), subject to such conditions or restrictions as may be specified in the regulations, including exempting a generator from subsection 79(4) in respect of electricity sold by the generator to a retailer or consumer."

The Vice-Chair: Comments?

Mr Baird: On the issue of double taxation, we heard a number of concerns from various presenters from around the province, and this basically provides a mechanism to prevent double taxation for those who might self-generate and use for themselves and then sell to company B, for example.

The Vice-Chair: Further comments?

Shall the amendment carry? Carried.

Shall section 80, as amended, carry? Carried.

New section: 80.1.

Mr Conway: I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following section:

"Public consultation

"80.1 Despite anything in sections 79 and 80, the determinations of the Minister of Finance referred to in section

79 and the regulations referred to in section 80 shall be made in accordance with detailed rules to ensure public consultation as established by the board."

This again is offered to provide some openness and some transparency around the setting of the stranded debt. Because of the conflict of interest that I mentioned earlier, and thinking about the testimony of people like the city of Mississauga hydro commission, the independent power producers — IPPSO — two deputants who made the point, it seems to me a pretty basic point that if there ever was a set of calculations that should be open to a public scrutiny, public review, this would be a place where you would want that to occur.

I didn't check my note on this, but Jim Dinning spoke to us in Sarnia. Did he ever submit any language? I think he offered on this particular subject to do so. Dinning is now in the employ of TransAlta, but I thought he suggested that he was going to offer some language around this. TransAlta was another group that definitely had some views about this.

Again, this amendment essentially reflects that kind of testimony from people like Hydro Mississauga and IPPSO and TransAlta that there ought to be some mechanism for an open process by means of which this calculation is developed and the application of special charges may be clearly understood by everyone involved. Again, in the interest of transparency, it struck me as a very sensible thing that we would want to do.

The Vice-Chair: Further comments?

Mr Baird: I think section 80 provides for regulations in terms of detailing specifically how any CTC would be made if it was so required — obviously there is a tremendous belief among many that it would be — and specifically on how it would be charged. Ontario Hydro, Finco, would table an annual report which would set out the details of any CTC and as well the residual stranded debt that would provide for a terrific amount of scrutiny and public review through the existing process.

The Vice-Chair: Mr Lessard.

Mr Lessard: I'll defer to Mr Conway.

Mr Conway: Again, a very critical point. If you look at section 80, what does it say? Cabinet "may make regulations respecting the calculation of the fees referred to in subsection 66(1) and respecting the manner in which, and the time at which, they are to be paid"; cabinet "may make regulations prescribing provisions of the Business Corporations Act...that apply, with necessary modifications, to the Financial Corporation"; cabinet "may make regulations prescribing other amounts for the purpose" — again, a very sweeping set of regulatory powers around a very important subject that is going to have potentially a very real impact on people's rates.

I'm not at all interested in an after-the-fact calculation two or three years down the road in something that's going to be this intricate. As Mr Lessard said, and so did a lot of the presenters, this stuff is really complicated. Trust me, there's an army of people at work out there now, and a lot of these people, including a number of people in the business community, want to know. They want to know there

is going to be a fair and open process going in as to how these calculations are going to be made and how special charges are going to be applied. I'm not kidding. I've used the analogy before: Who among us would walk into a bank or a trust company and negotiate a mortgage on the basis of the information we've got here? We're being asked to sign a mortgage without knowing the interest rate, without knowing the amortization period. You wouldn't do it in your own private lives. The Legislature certainly should not do it in this case.

This is another example of where the government has got to be seen to be as good as its rhetoric. Simply saying, "Bill 80 gives us sweeping regulatory powers to do as we damn well choose and we'll debate it after the fact, 18 months from now," is not good enough, particularly since it is the stated position of the government that you want to provide rate benefits for all classes of customers. I don't see why you would not be interested in acceding to the requests of the deputants to whom I've made reference and many others who have looked at this debate and said, "The whole determination of the stranded debt, how they choose the various special payments, how they get applied, is a process we would like to see opened up, and we want to see it beforehand, not after the fact."

The committee heard some pretty strong testimony on that. It seems to me that, given again how enormous are the powers given particularly to the Minister of Finance, how significant are the implications to the electricity bills of millions of Ontario consumers, how conflicted the Minister of Finance is in this whole situation — he's not a neutral party; he has a very real interest — I would like to think that one of the ways we might want to reasonably constrain his interest, his personal administrative interest, would be to open it up and let the community see just how these calculations are being made and how they are going to in effect come to bear on particularly the electricity bills of residential and farm customers.

Mr Lessard: Once again, I just want to reiterate the importance of the determination of the amount of the stranded debt on the success or failure of the government's intentions and policy direction in Bill 35.

I think what Mr Conway is trying to do is introduce some transparency into a system that requires that transparency. These aren't ideas that Conway and Lessard have come up with off the top of their heads. This is stuff that came from a number of presenters who said that having a transparent process determining the amount of the stranded debt is critical, in addition to having the right amount of the stranded debt.

1740

One of the ideas I had considered was that perhaps the whole determination of the stranded debt should be something that would be subject to the purview of the Ontario Energy Board. In fact, I put that question to the eminent current chair of the energy board, Mr Laughren, and he wasn't really that keen on the idea so I didn't pursue it much further after that. I think it is important that there be some public input, some public involvement, some public scrutiny, as to the determination of the stranded debt.

As Mr Conway has said, and I'm sure everybody on this committee understands, this is an incredibly complicated area. When we started out on these hearings, I thought with each passing day that the more I heard, the less that I knew about what was happening in Bill 35, and it hasn't become a whole lot clearer based on the government's explanations going into clause-by-clause.

The impacts of Bill 35 on rates are going to be enormous. That's the reason we've been arguing so strenuously that the government put some indication in the objects of the bill or the purpose section of the bill that their intention is to have low-cost energy for all consumers, as indicated in the title. For whatever reason, the government is not interested in putting that in the objects of the bill, and for whatever reason, they are probably not going to support this amendment. I don't know why. It is an attempt to ensure there is some public consultation with respect to issues that are of critical importance to the success or failure of this change in government policy.

Why the government wouldn't be interested in public consultation is something I'd be interested in hearing from government members. I think everyone in government recognizes that you don't always remain there forever, either. The rules that are being put in place now are rules that will continue to be in existence long after Bill 35 has been debated and no longer is in the public spotlight, but the impact on rates is going to be felt by consumers for a good long time into the future, and whatever extra time may be required to ensure there is real public consultation is something we owe to people well into the future, to ensure that we take the time to be involved in that.

The Vice-Chair: Further comments?

Mr Baird: With respect to comments by my colleague from Renfrew North, just two points, and I don't want to belabour them so I'll be brief. His example of going to a bank and obtaining a mortgage and you would ask the details, that would be to obtain new debt. What we're talking about here is existing debt, which is a point that I've hammered home. I regret that I didn't have my little chart with me —

Mr Lessard: What is that debt? What is it?

Mr Baird: The chart's back at the office. So we're talking about existing debt.

The second point with respect to my colleague's suspicion of the LGIC's authority to set up regulations: Even he, in his proposed amendment, leaves the detailed rules to ensure public consultation up to the LGIC, but under 79(2) and (3) it's clear in terms of the minister's ability to make a determination on the residual stranded debt and then (3) his ability to set a determination and the reporting requirements that would be prescribed by regulations. So even he leaves it up, as does subsection 79(3), to the LGIC to establish and make public reporting requirements.

It leaves a considerable amount of ability for scrutiny and for public review. This whole exercise has been one that's been characterized by significant stakeholder and public consultation. The section we've already adopted, that he makes reference to in his amendment, sets out

some reporting requirements. I don't see how detailed rules which are yet undefined would mask what 79(3) already proposes to do.

Mr Conway: Let me just respond. Again, the government is not going to get off the hook this easily. The government is advertising one thing and doing something quite differently. You say you're for competition, but what you're doing ignores the strongest advice you have gotten from two expert panels, so on a fundamental tenet of this policy you have ignored clearly the advice of two very significant panels that you yourself struck. Let me say that again.

On the question of what this says, it's very clear what 80.1 says: "detailed rules to ensure public consultation as established by the board." And this business about the debt. You don't know what the current situation is; none of us knows. Why? Among other things, you have no idea what that situation at Ontario Hydro Nuclear is. You haven't got a clue; nor do I. So don't give me this baloney about future debt. We're sitting here just blithely ignoring a central question that we have no answers for. This — give me a break.

I've got some sympathy for these people. I've got a lot of sympathy for finance, for the baloney they've had to put up with for the last number of years. There is a part of me that wishes that in the fight that's going on now finance gains an upper hand over Hydro. I have no late intelligence to me who is winning and who is losing. There is also a part of me that sort of says, "What am I being asked to do?" It's easier for me to say this than some of you, but this is so typical: sweeping executive regulatory power with the bromide: "Trust us. Just trust us, it will be all fine."

One of the reasons I want some transparency around this is the point I made in the discussion around Ontario Hydro Nuclear. If there had been some greater transparency about some of the baloney that had been going there — it's not the word I want to use; there are some other, much more delicious ones — and it's not a laughing matter. The public and the ratepayers have been really hosed by these people, and hosed to the tune of billions of dollars, because there was no transparency. As new members, you have a right to be upset about this. You, I would have thought, would want an opportunity to say, "Not on our watch are they going to get away with the same old tricks." They're getting away with the same old tricks. It's business as usual. Before I kind of go down, I want to go down with a bit of a fight because I cannot believe that Hydro's getting away with this. "Trust us."

Mr Gilchrist: The ratio —

Mr Conway: Listen, the normal routine around is that by the time any of this stuff comes to roost 80% of us will be gone. There will be a new bunch of hand-wringers here in 2003 saying, "How did they ever let this happen?" One of the protections that I see, particularly on the basis of some of the evidence we heard, was force some of this into the light of day.

I think you are right in terms of empowering the energy board. For the first time we are going to get a more

meaningful, more independent regulation of this sector. I think that's a good thing. That's why I don't like the directive power, because that's going to open the door to politics as usual. There's going to be some government, there's going to be some minister getting closer to an election — can you imagine poor old Ralphie? I don't know what the Alberta election cycle is. Where are they? They're in the early part of the mandate. Can you imagine the politicians in a place like Alberta — if what the *Globe* reported on Saturday, if 30% of that was a likely possibility — what would be going on in terms of trying to set yourself up for something other than a decapitation as you faced the electorate?

One of the things that in principle is good about this policy is the notion that there is going to be some independent regulation in the name of the consumer. This is complicated stuff; it's going to have an impact on their rates. Why would we not want to put some transparency in the name of the consumer, empowering the consumer? If this language is unattractive or inadequate, then let's scrap it and come up with some of our own, come up with something that's better.

1750

But again I simply make the point that this is about determining some absolutely critical questions that will involve billions of dollars and every ratepayer in the province. There is going to be into the future what there has been in the last few months and couple of years. There will be fierce lobbying under the waterline to position oneself as favourably as you can. The lobbying that's been going on, it's probably no secret, is pretty focused around certain selected interests at the present time. I worry, as I think all of us hopefully do, about the average citizen out there who's just tuning into this, who has no real idea of how this is all going to work out but is hoping there is somebody out there paying some attention to their interests as a consumer. That's why this amendment is there.

Remember the Market Design Committee's advice to the government in the second report. They made the case, I think very wisely so, that because this is going to be a dynamic marketplace, it's going to be very complicated and you're going to want clarity beforehand, going in. You want to know what the rules are beforehand. They much preferred the beforehand rule-setting, as opposed to the after-the-fact stuff. I think they're right on that.

I would have hoped that there was some consensus in the name of the broad consuming base of residential and farm customers that if there was ever a place we wanted to afford them some meaningful protection, it would be on this. If the committee chooses otherwise, so be it, but it certainly would disappoint me, to say the very least.

The Vice-Chair: Further comment? Shall section 80.1 carry? Defeated.

Section 81.

Mrs Johns: I move that subsections 81(3) and (4) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by,

(a) striking out "retired" in the last line of subsection (3) and substituting "retired or defeased"; and

(b) striking out "retired" in the fourth line of subsection (4) and substituting "retired or defeased."

The Vice-Chair: Comments?

Mr Conway: Is there a lawyer in the house here?

The Vice-Chair: Yes.

Mr Conway: There is clearly a meaning to the word "defeased" in commercial law. Does somebody want to give it to me?

Mr Baird: When inflows equal outflows.

Mr Conway: I want to hear it from a lawyer. I'm sorry, I don't mean to be rude. Macdonald, in his report, kept talking about defeasement and I was quite interested to know as precisely as I can what that means.

Ms Hanslep: Basically it means that, for example, a corporation may have an asset that provides itself with inflows. Again, "its debts are defeased" means that its inflows equals its outflows. It's used in accounting. Something can be defeased and therefore it can be removed from the balance sheet because there is an inflow that will equal it.

Mr Conway: I just want to check the language of this. You're striking out "retired" and substituting "retired or defeased." So how is it that defeasement is not retirement?

Ms Hanslep: I guess "retirement" is actually paid off, whereas in "defeased" the liability is still there but there is an inflow that equals the liability so there's no net liability.

Mr Conway: This gets more interesting then.

Mr Baird: Basically it adds "defeased" as one of the two conditions with which Finco can be wound up by proclamation. Your question's not invalid.

Mr Conway: As I say, this Financial Corp is much bigger news than the dopey old Legislature understands, so when I see these kinds of refinements, I'm just kind of interested to know. So defeasement is essentially having on the books assets to offset any liabilities?

Ms Hanslep: Yes, cash flow.

Mr Baird: No, income.

Ms Hanslep: Income, yes.

Mr Conway: You're telling us more here than we understand, but anyway.

Mr Baird: And it's "may," not necessarily "would."

Mr Conway: I can just hear it in a couple of years' time, "Oh, you didn't understand that possibility under the peace, order and good government sections?"

The Vice-Chair: Further comment? Shall the amendment carry? Carried. Shall section 81, as amended, carry? Carried.

Section 82.

Mr Conway: I'm finished. Are we sitting till midnight?

The Vice-Chair: No, we're sitting until the time we started, which was five minutes later by that clock. We've got another four minutes.

Mrs Johns: I move that the definition of "adjusted gross revenue" in section 82 of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out.

Mr Baird: As a result of the hearings we're getting rid of the adjusted gross revenue, so we don't need this section any more.

Mr Conway: That I commend the government for. I think that's a good amendment and should be supported.

The Vice-Chair: Further comments?

Mr Lessard: Mr Chair, I don't have a further comment but I just have a point of order that I want to raise before we break.

Mr Baird: Could we vote on this and then have your point of order?

The Vice-Chair: Shall the amendment carry? Carried. Shall section 82, as amended, carry? Carried.

Mr Lessard: Mr Chair, last week we got the schedules for committee hearings this week and it indicated that we were going to be sitting today and on Wednesday and Thursday as well. That's something we had some discussions about last Monday. I'm not sure whether we had some tentative agreement with respect to that, but I'm suggesting that instead of meeting on Thursday, we meet next week some time. Since Monday is a holiday, that would make it next Wednesday. I've spoken to Mr Conway about that and he's indicated he doesn't have any objection to that. I'm just asking for the committee's consent to meet next week.

The Vice-Chair: We did have a tentative agreement for the 8th.

Mr Lessard: It's a problem for me. That's the reason I'm asking for that.

Mrs Johns: I think we have to have a discussion about that here. We have a lot of people who are running with this committee both in the Ministry of Finance and the Ministry of Energy and we would have to have a chat about that. Is there some specific time that's a problem for you on that day that we could work around? For example, is it in the morning or the afternoon?

Mr Lessard: The afternoon.

Mr Conway: It's a straight party vote here, an absolutely straight, down-the-line party vote. It's like the Roman Curia talking to the Southern Baptist Convention.

Laughter.

Mr Conway: Well, it is. So let's not accord this thing any kind of real parliamentary respectability. Maybe we can meet here — it's just a case of talking to the wall.

Mr Baird: Mr Conway, a key vote. Maybe there could be something worked out if it's possible.

Mrs Johns: We can certainly try. It's my understanding that the time problem you have is after 4:30, when the motions are all put. Is that correct?

Mr Lessard: Actually, it could be earlier than that.

Mr Conway: We know that the government is not going to effect any amendments. That's a given, so —

Mrs Johns: I don't know why you're saying that. We tried to move to competitive pricing. There are certainly some where we've had the same amendments.

Mr Conway: I don't want to tease the bears.

Mrs Johns: I don't understand why you're trying to say that, Mr Conway. We've listened intently. We're consciously moving forward here. In finance, the adjusted gross revenue was something you wanted.

Mr Baird: The last amendment —

The Vice-Chair: Hold it, please. We're not debating anything that is in the book. That's what we're here for. We're at the moment talking about when we're going to meet next.

Mr Lessard: It's a simple request. If it's not agreeable, I won't be here. It probably won't make any difference, as Mr Conway has pointed out, in any event, because the government isn't prepared to accept any of our amendments.

Mrs Johns: I will certainly try and work that out. I will try and get the time necessary for Mr Lessard. My office will be in touch with his and we'll see where the problems arise.

The Vice-Chair: Sounds good. We're adjourning till Wednesday.

The committee adjourned at 1800.

CONTENTS

Monday 5 October 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson* /

Loi de 1998 sur la concurrence dans le secteur de l'énergie,

projet de loi 35, *M. Wilson* R-457

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Also taking part / Autres participants et participantes

Ms Cynthia Brandon, counsel, Legal Services Branch,

Ministry of Energy, Science and Technology

Mr Steve Dorey, ADM and chief economist,

Ministry of Finance

Ms Malle Hanslep, solicitor, Legal Services Branch,

Ministry of Finance

Mr Bill McLean, senior policy analyst,

Taxation Policy Branch, Ministry of Finance

Hon Jim Wilson, Minister of Energy, Science and Technology

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Doug Beecroft, legislative counsel

CA20N
X2 13
176

Document
176



R-13

R-13

ISSN 1180-4378

**Legislative Assembly
of Ontario**
Second Session, 36th Parliament

**Assemblée législative
de l'Ontario**
Deuxième session, 36^e législature

**Official Report
of Debates
(Hansard)**

**Journal
des débats
(Hansard)**

Wednesday 7 October 1998

Mercredi 7 octobre 1998

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Energy Competition Act, 1998

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**



Chair: Brenda Elliott
Clerk: Donna Bryce

Présidente : Brenda Elliott
Greffière : Donna Bryce

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 7 October 1998

The committee met at 1534 in committee room 1.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

The Chair (Mrs Brenda Elliott): Good afternoon, colleagues. We convene our committee of resources development for the purpose of clause-by-clause consideration of Bill 35.

I understand we begin today on page 60. This is a Liberal motion. Mr Conway.

Mr Wayne Lessard (Windsor-Riverside): On a point of order, Madam Chair: At the end of the meeting on Monday I reiterated a request that I had made about possibly adjourning the hearings that we have scheduled tentatively for tomorrow until next Wednesday. There wasn't any decision made with respect to that and I was wondering if that was something we might be able to deal with today. That's the suggestion I'm making.

The Chair: Any discussion?

Mrs Helen Johns (Huron): On Monday I suggested that my staff and Mr Lessard's staff should discuss exactly what time frame problems we had and try to deal with that. My staff called Mr Lessard's staff late yesterday and we haven't heard from them about the timing problems, so we don't know exactly what times we have the problem with. We of course have staff from both the Ministry of Finance and the Ministry of Energy and we're trying to move forward as quickly as we can. I guess we don't understand the issues yet and what times it is and if we can move around with staff or we could sit in the evening and finish this off or how that would work. We don't have enough information to be able to deal with this issue until Mr Lessard's staff calls back or lets us know what's going on. From our standpoint, until we get more

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 7 octobre 1998

information, we're going to have a hard time changing this.

Mr Lessard: Let me make it simple: My request is that we not meet tomorrow afternoon but that we meet next Wednesday.

Mr Sean G. Conway (Renfrew North): I have no problem with that.

The Chair: Is that a motion that you want to put on the floor? Mr Lessard has moved that we do not meet tomorrow, that this committee reconvene on —

Interjections.

Mrs Johns: It's my understanding that there's a time allocation on this and I am unsure whether this will work as a result of that. That's why we were trying to find different times tomorrow. I am confused and I ask not for the motion but for some understanding of this. Then if we insist on voting on this right now — I think we could leave this until the end of the day again and we'll see if there's something we can't do about that.

The Chair: Just for everyone's information, we're just checking the House order. The House order said, "...for a fifth day of clause-by-clause consideration from 9 am to 12 pm and then following routine proceedings until completion of clause-by-clause consideration."

Mrs Johns: What I think that means is we can't do part of the day tomorrow. Whatever day we decide to do this, we have to do all this —

The Chair: All on one day is the way I read it as well. I would agree. Maybe, Mr Lessard, you could have your staff — do you want to leave this until the end of the day because you're not sure of the rationale? Could you have your staff write a couple of notes to Mrs Johns's staff?

Mr Lessard: I'll send her a note that my staff aren't going to help.

The Chair: Just to discuss why we would go to this point, because it is kind of at the last moment and I think plans have been made for many people.

Mr Doug Galt (Northumberland): I was just going to comment, Madam Chair, that I've certainly made a lot of shifts and I would like to have the Thursday morning off, to be quite honest. But I've moved an awful lot of things around to accommodate the time frame as I understand was legislated. I'm a committee member and I'll be here. I would think that the rest of the committee members have a similar obligation and if they can't be here, then they should find a substitute.

The Chair: Why don't we begin our clause-by-clause consideration. We'll come back to this at the very end of the day and we'll discuss this further just before we break.

Mr Conway, would you read your amendment, please?

Mr Conway: Is there any need to? I think your predecessor the other day ruled that the Chair was finding this class of amendment out of order.

The Chair: You can withdraw it if you wish. It will be ruled out of order.

Mr Conway: I just want to be helpful, these are similar. That was the ruling, Donna, as I recall it.

The Chair: If you withdraw it, that's fine, but it would be ruled out of order.

Mr Conway: I withdraw.

The Chair: Moving to page 61, a government amendment, Mrs Johns.

Mrs Johns: I move that subsection 83(2) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "After a date prescribed by the regulations" in the first and second lines and substituting "After part V is repealed under section 81."

The Chair: Questions or comments? Mr Baird.

1540

Mr John R. Baird (Nepean): This is similar to the previous amendment to section 81 and just clarifies that the payments in lieu of provincial corporate taxes payable by Servco and Genco would cease to be paid to Finco, when Finco is dissolved pursuant to section 81.

The Chair: Further questions or comments? Seeing none, I put the question, then. Shall this amendment carry? All those in favour? Opposed? Carried.

Any further amendments to section 83? Shall section 83, as amended, carry? All those in favour? Opposed? It's carried.

Section 84, a Liberal motion, withdrawn.

A government motion also on section 84, Mrs Johns.

Mrs Johns: I move that subsection 84(2) of the Electricity Act, 1998, as set out in Schedule A to the bill, be amended by striking out "After a date prescribed by the regulations" in the first and second lines and substituting "After part V is repealed under section 81."

The Chair: Further discussion on this amendment on page 63?

Mrs Johns: This is a consequential amendment as a result of changing the date prescribed in regulations, as a result of the section 81 change.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions or comments on section 84? Shall section 84, as amended, carry? All those in favour? Opposed? It carries.

Section 85 is a government amendment on page 64.

Mrs Johns: I move that subsection 85 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

"Restriction

"(1.1) No payment may be required under subsection (1) if the payment would impair the ability of the Genera-

tion Corporation, the Services Corporation or a subsidiary of the Generation Corporation or the Services Corporation to meet its financial liabilities or obligations as they come due or to fulfill its contractual commitments."

The Chair: Comments on this section?

Mr Baird: This is with respect to bringing a parallel change as we did earlier to put Servco and Genco on the same footing as the government with respect to debt under the FAA, the Financial Administration Act.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

The Chair: We have a Liberal amendment.

Mr Conway: Withdrawn.

The Chair: OK. We have a government amendment on page 66 to subsection 85(2).

Mrs Johns: I just need a minute, Madam Chair, for Mr Baird to come together here. He thinks we've missed a section, so just give us a second.

Mr Baird: OK. Amendment to the amendment presented under 85(2).

Mrs Johns: I move that subsection 85(2) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "After a date prescribed by the regulations" in the first and second lines and substituting "After part V is repealed under section 81."

Mr Baird: It's the same amendment we just made to 83(2).

The Chair: Further questions and comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Any further questions or comments on section 85? Seeing none, shall section 85, as amended, carry? All those in favour? Opposed? This carries.

Schedule A, section 86, a government motion.

Hon Jim Wilson (Minister of Energy, Science and Technology): I move that clauses 86(1)(a) and (b) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"(a) the amount of taxes that it would be liable to pay in the year for municipal and school purposes if the assessed value of land owned by it on which are situated generating station buildings or structures or transformer station buildings or structures were determined on the basis of the amount prescribed by the regulations for each square metre of inside ground floor area of the actual building or structure housing the generating, transforming and auxiliary equipment and machinery; and

"(b) the amount of taxes that it is liable to pay in the year for municipal and school purposes in respect of land owned by it on which are situated generating station buildings or structures or transformer station buildings or structures."

Mr Baird: You'll recall the instruction of that the other day with respect to the amendment presented under 78(3). This just expands buildings to include structures to capture transformer towers.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

We have a Liberal amendment. Mr Conway is absent. This amendment is out of order, so we'll move on to a government amendment on page 69.

Mrs Johns: I move that subsection 86(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "After a date prescribed by the regulations" in the first and second lines and substituting "After part V is repealed under section 81."

Mr Baird: Not to sound repetitive, this is the complementary amendment to 83(2) with respect to revenues after Finco is dissolved.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? It carries.

Further questions or comments on 86? Shall section 86 as amended carry? All those in favour? Opposed? It carries.

Section 87, a Liberal amendment. Again, this amendment is out of order pursuant to standing order 56.

We also have a Liberal amendment on page 71 to subsection 87(1.1). This amendment is out of order. It is a redundant amendment to work we've already covered.

Page 72 is a government amendment to section 87.

Hon Mr Wilson: I move that section 87 of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Municipal electricity utilities: payments in lieu of federal corporate tax

"87(1) If a municipal electricity utility is exempt under subsection 149(1) of the Income Tax Act (Canada) from the payment of transfer under that act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that act if it were not exempt.

"Same: payments in lieu of provincial corporate tax

"(2) If a municipal electricity utility is exempt under subsection 57(1), section 57.11 or subsection 71(1) of the Corporations Tax Act from the payment of a tax under that act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that act if it were not exempt.

"Payments to Minister of Finance

"(3) After part V is repealed under section 81, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation.

"Commencement of new taxation year

"(4) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force."

550

The Chair: Just one note: Under section 87, the third one, I think you read "payment of transfer" and it actually says "payment of tax." Is that correct?

Hon Mr Wilson: I'll take your word for it.

Mr Baird: This amendment reflects the input we received from a good number of MEUs, from the MEA and from AMO with respect to the tax treatment of local municipal electrical utilities.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? It's carried.

Page 73 is not an amendment. This is tabled for information.

Any further questions or comments on section 87? Seeing none, shall section 87 as amended carry? All those in favour? Opposed? It carries.

Schedule A, section 88, a government amendment on page 74.

Hon Mr Wilson: I move that subsection 88(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Municipal electricity property: transfer tax

"(1) A municipal corporation or municipal electricity utility shall not transfer to any person any interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity unless, before the transfer takes effect, it pays to the Financial Corporation the amount determined by multiplying the fair market value of the interest by the percentage prescribed by the regulations.

"Same

"(1.1) For the purpose of subsection (1), an interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity shall be deemed to include any interest in a corporation, partnership or other entity that derives its value in whole or in part from real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity.

"Deductions from amount payable

"(1.2) Subject to subsection (1.4), the amount payable under subsection (1) in a taxation year by a municipal electricity utility may be reduced by the following amounts:

"1. Any amount that the municipal electricity utility has paid under section 87 in respect of the taxation year or a previous taxation year.

"2. Any amount that the municipal electricity utility has paid as tax under part II, II.1 or III of the Corporations Tax Act in respect of the taxation year or a previous taxation year.

"3. Any amount that the municipal electricity utility would be liable to pay as tax under part I of the Income Tax Act (Canada) in respect of the taxation year if that tax were computed on the basis that the municipal electricity utility had no income during the taxation year other than the capital gain realized on the transfer of its interest in the property.

"Same

"(1.3) Subject to subsection (1.4), the amount payable under subsection (1) in a taxation year by a municipal corporation may be reduced by the following amounts:

"1. Any amount that a municipal electricity utility that is related to the municipal corporation immediately before the transfer has paid under section 87 in respect of the taxation year or a previous taxation year.

"2. Any amount that a municipal electricity utility that is related to the municipal corporation immediately before the transfer has paid as tax under part II, II.1 or III of the Corporations Tax Act in respect of the taxation year or a previous taxation year.

"Same

"(1.4) An amount referred to in paragraph 1, 2 or 3 of subsection (1.2) or paragraph 1 or 2 of subsection (1.3) may be applied under those subsections to reduce the amount payable by a municipal corporation or municipal electricity utility under subsection (1) only to the extent that it has not previously been applied to reduce an amount payable by a municipal corporation or municipal electricity utility under subsection (1).

"Same

"(1.5) A municipal electricity utility shall be deemed to be related to a municipal corporation for the purpose of subsection (1.3) if they are related persons within the meaning of section 251 of the Income Tax Act (Canada)."

Mr Baird: This just helps to make some consequential changes with respect to the calculation of the transfer tax. We heard a lot of MEUs, and I think AMO, come forward with respect to how that transfer tax was calculated, and this amendment seeks to respond to that concern. Basically, when an MEU or, I suppose, a municipal corporation, calculates a transfer tax, they could deduct payments in lieu of corporate taxes, taxes paid out under the Ontario corporate tax or any federal capital gains taxes that are liable.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

The next is a Liberal amendment. I'm sorry, this too is out of order because it contravenes standing order 56.

Government amendment, page 77.

Mrs Johns: I move that subsection 88(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Same

"(3) Subsection (1) does not apply to transfers prescribed by the regulations."

Mr Baird: It's another transfer tax amendment that I'll seek to clarify for my colleagues. Simply put, if the transfer tax is already paid, you won't have to pay it again. This just seeks to clarify that.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Government amendment on page 78.

Mrs Johns: I move that subsection 88(5) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "After a date prescribed by the regulations" in the first and second lines and substituting "After part V is repealed under section 81."

Mr Baird: This is a complementary amendment to the amendment we adopted under 83(2).

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion on section 88? Shall section 88 as amended carry? All those in favour? Opposed? This section carries.

We have a new section, Mr Conway, on page 79, a Liberal motion.

Mr Conway: I move that the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following section:

"Cessation of payments

"88.1 Despite sections 83 to 88, no further payments shall be made under those sections after the Minister of Finance has determined under subsection 79(6) that the residual stranded debt has been retired."

The purpose of this amendment is to support the point I've made on many earlier occasions, that upon the retirement of the residual stranded debt it's the view of my colleagues and myself that the government should not be automatically in possession of the windfall revenues that would accrue to its treasury without there being some clear understanding of what's occurring. We think that while the level playing field argument is an understandable one, there should be, as Mr Dorey himself indicated in some of his testimony, a requirement that the government come to the Legislature and articulate a tax and revenue policy that speaks to the hundreds of millions of dollars — perhaps billions, who knows? — of new revenue that will be available to Her Majesty's treasury at the point when the residual stranded debt is deemed to have been paid down.

Mr Baird: I'll just speak briefly to that. I think the creation of a level playing field is something we all would agree is central to attracting new investment, particularly in this area. I suspect TransAlta wouldn't want to make an investment, especially the investment they're making in Sarnia, if their competitors were going to be on a different playing field. I think, if we don't have a level playing field, there will only be one player on the field. It's central to that. So at that time, in eight years, 10 years, 15 years, 25 years, when that stranded debt is paid off, obviously the government of the day would want to look at its revenues, as it does every year.

There are a good number of tax cuts passed through Bill 15 that are yet to go into effect that are certainly in the hundreds of millions of dollars over the next seven years. That's a considerable amount of tax cut into the future, which I think signals that this government's all about cutting taxes, so there's certainly no attempt to raise any additional revenue in 10, 20 or 25 years with this provision. It's just to ensure there's a level playing field. The government of the day, at that time, will obviously want to look at that and make some decisions based on the best information they have in 10 to 20 years.

1600

Mr Conway: The amendment reflects the view of groups like Hydro Mississauga and Thunder Bay Hydro, two that came to my mind. I think it is prudent for the Legislature to exercise this kind of oversight, particularly when the finance minister and the finance department have such obvious institutional interests in a number of these matters. I accept the argument about the level playing field, but I also advance the argument that the referee is not neutral. Any time a referee with this kind of power has this opportunity to benefit from critical decisions in this area, I think there is an added duty that the finance minister, on behalf of the government, come to the Legislature and indicate what the tax policy is going to be with respect to what I would imagine to be very substantial windfall revenue gains to the treasury.

I accept the argument about the level playing field. I can remember a very lively discussion one Friday afternoon, I think it was, about two months over at the Frost Building where these good people from treasury sitting before us this afternoon took me through this in some detail, for which I thank them now and then. I don't quarrel with, I understand the argument about the level playing field. I think you have to have that, but I just observe that in this game there is a point at which certain other things happen and those are not insignificant happenings.

The special payments to which this amendment makes reference are going to represent, presumably, substantial new revenue streams to the government. Like a number of the people who presented to the committee during the earlier stage, I would just feel much more comfortable that those payments, upon the retirement of the residual stranded debt, were then understood to be part of a new tax policy. I just think, in the public interest it should be incumbent on the Minister of Finance of the day to come to the Legislature and clearly articulate what that policy is going to be.

I also move the amendment in the broader picture too, that this timing is going to be controlled. The timing of the termination of the residual stranded debt is in the control of the Minister of Finance. The mix of instruments by means of which it's going to be paid down are in the control of the Minister of Finance. He or she will just be in the happiest of all positions, a conflict of interest on more sides than I could imagine.

I suppose if one wants to be — and this is another one of those positions where you can either be Pollyanna or I.F. Stone. I'm just more inclined to be I.F. Stone than Pollyanna. I just think the notion of sunseting this, to at least force the Minister of Finance of the day to come before the Legislature and say, "This is the new tax policy that's going to govern the revenue streams that will be made available" — understandably, because of the level playing field. I'm not arguing that point. I'm just arguing what happens as a result of there being a "level playing field" and the situation in which the Minister of Finance finds himself or herself at the time.

If one believes in a kind of executive tyranny for which this place is famous, this amendment will be nothing but a parliamentary nuisance and treated as such.

Mr Baird: The general issue which you raise is certainly one which we've all thought about and which had a terrific number of presenters come forward, so this is not an issue that any of us takes lightly. I do have a number of concerns with what you've said. I think we'd want to have a public policy discussion over the general tax revenue policies and taxation policies of the government, but I think that with the amendment, it would somehow indicate to any potential investor that the tax policy is an open question and that we would be questioning, in 10 or 25 years time, or whatever time that residual stranded debt is paid off, that we were open to establishing an un-level playing field. That level of uncertainty would have a negative effect on investment. Some of the MEUs obviously would like to be able to help keep some of their potential competitors at bay.

One thing I would want to add in is that the CTC, if it was required, would be required to be dropped immediately once the residual stranded debt was paid off, and that's something that's important, if it was required. On the issue of the timing at the end of the stranded debt, that is not something that could be done — I mean, the debt's either going to be there or it's not going to be there. I don't think the minister, if he wanted or she wanted at that time, 10 or 25 years from now, to drag it out or to expedite completion — if it's securitized there's going to be a revenue flow going to pay off an existing debt if it's completed. I don't see there's a particular advantage to them doing it sooner rather than later. They're still going to inherit any bondholders or any revenue streams.

I think also at that time obviously there would want to be discussion, if there is a degree of new revenue coming in in 10 or 25 years, sure they'd want to have that discussion on taxation policy. But I think that, with this amendment, it would leave a level of uncertainty there that would say that the Legislature is indicating that an unlevel playing field is an option in the future. While that's not the intent of the amendment, I think it would leave a level of uncertainty there.

Mr Conway: I think the member makes an interesting point and I would have to acknowledge that that is a point to be taken account of. There is another possibility, however. If I were an investor or if I were a consumer, a residential or an industrial consumer, I would note that this policy imposes significant new charges and taxes on electricity — significant new charges and taxes on electricity. This is the point of people like Mississauga Hydro and others. Those taxes are acceptable on the basis that there is a special obligation. There is an obvious requirement that whatever that mountain of residual stranded debt is it has to be retired.

But the question then arises, are these politicians going to — and let me tell you, for decades there has been a great interest around here and around various treasury offices to find ways to tax electricity. It's been a very old and lively debate. Well, we are taxing — for reasons that

I understand, you cannot have the kind of competitive marketplace that some of us want without levelling the playing field. I understand that.

In a perfect world we wouldn't have this stranded debt issue and we could get to a more transparent tax policy right up front. But, for reasons that we all understand, we don't have that luxury. But, I say to the committee, I'm a business person, I'm an investor who's looking at Ontario, or I'm just a consumer, and I'm thinking, boy, this is an interesting policy. We don't know what these new charges are going to be and in what mix. Some of them drop away once the debt is paid off, and others carry on to keep a level playing field.

But again, finance — if I'm the finance minister this is exactly what I want. I want the maximum flexibility to have available to me all of the instruments, particularly new instruments, ones that I've never had before. This bill gives me new tax instruments of the best kind because they're the ones that get at the big rate base, that get at the entire playing field.

You bet, if you are sent here to flack for treasury, you'll do exactly as the member from Nepean did irrespective of who is in government. There is no treasurer extant who wouldn't publicly and privately salivate over the taxation possibilities that this policy offers, and there's this absolutely wonderful front, the level playing field. And they're right, they're absolutely right, you have to have it, but it doesn't just end there. It gives the treasury the right now to impose new charges on the entire province in whatever measures and in whatever mixes they choose.

1610

I know I would never get it, but I'm sure there are models three or four people in finance or the people over at Hydro have looked at. I can just imagine the models for this level playing field business: What portion of a percentage would I need from a rate base of X million to give me a quarter of a million dollars worth of revenue? A half a billion dollars worth of revenue? We're talking about new revenue. This is new to the treasury, with the odd, minor exception. We're not talking nickels and dimes.

When Macdonald tabled his report, and I was talking to the commissioner at the time, they were looking at a stranded debt in the neighbourhood of \$15 billion. Their estimates were that you could write that down in, I think they used a figure of something like six to eight years. That was on a \$16-billion figure. The figure, apparently, is probably going to be higher than that. I read the Financial Post, and today I see that Greg Crone has a column where Hydro has the latest estimate, I think for the first time publicly, although this is just putting a number to Mr Farlinger's speech of some months ago, that the nuclear liabilities are at \$18.7 billion. This is the first time I think I've seen this. That is, presumably, a figure that's got to be factored in. That, by the way, is how Mr Farlinger got to the \$50 billion.

At any rate, the number that Hydro is apparently now making public as their best estimate of — you've all seen

today's Post, I presume. He may have it all wrong. It looks about right to me. But the main point here is that the government, the Minister of Finance, is going to have, as a result of this policy, what ministers of finance have wanted for a long time, the right to tax electricity. I just think that should be taken note of.

Again, the point I was making a moment ago is that when the estimates were being advanced as to what kind of time schedule would be required to write off a \$15- or \$16-billion stranded debt, in the days of Macdonald two years ago figures were being kicked around of six to seven years. That Scotia McLeod session in New York in April had some pretty well-known people giving estimates that were even less in terms of time. Again, the timing is going to be critical, both to rates and to other things, because the shorter the period of time, presumably the greater the yield you have to get from whatever instruments you apply, and the more likely that would have an adverse effect on rates.

If you're thinking about rates, you'd probably want to have a longer rather than a shorter period of retirement. If you're thinking about the treasury and getting at new revenue streams, you'd want that period of time as short as you can make it. These are open questions. Again, the government will argue, as any government will argue under these circumstances, "Trust us." I just think that if I'm a consumer, if I'm a would-be investor, I might like to know just how the government is going to treat the question of taxing electricity, because I would probably conclude that, on a commodity that important, the more charges and the more taxes that are imposed on the commodity the higher the price.

Now I suppose if somebody could tell me, "But we're going to be replacing high-cost power from generation X with very low-cost power from generation Y," then there is a lot of room to fill some of that gap with new charges or new taxes, the net effect of which would be to enrich the treasury and not appear to unduly inflate the price of electricity.

Again, in summary, my concern here is not with the level playing field — that I understand — but with the consequence of the level playing field to the referee in this game. This referee has virtually all of the decision-making instruments around the amount and the nature and the timing of the residual stranded debt in his or her hands. I think some requirement that, at the point when that residual stranded debt is deemed to be paid off — and obviously it would have to be somewhat beforehand so there would be an opportunity for the minister to come to the Legislature and say, "This is now how we intend to treat the hundreds of millions of dollars of new revenue that will be available to the province, because the debt will be retired within six months and we are going to do the following things with that money."

Mr Baird: I don't want to drag this discussion on, but I guess I share my colleague from Renfrew North's view that this is an important question. I think he has made some excellent points, but there is a gulf between the political discussions and valid public policy concerns that he has raised and the amendment. The amendment leaves

open the option that there may not be a level playing field, and that's one that I think most of us would find unpalatable. It would be a real disincentive to new investment.

If I'm thinking about getting a concrete slab and putting a turbine generator with natural gas in Nepean and I have to compete against Nepean Hydro across the street and — surprise, surprise — in 10 or 25 years I know that Nepean Hydro isn't going to have to pay any taxes any longer, there will only be one team on the field and we will not have competition. It just simply will not happen. It will be a tremendous disincentive to investment early on. That is something I think we all want, some new investment in this area in job creation. In particular, I think of TransAlta in Samia.

The member mentioned some significant new charges in electricity with respect to retiring the debt. Consumers today are paying to service and to retire that debt. I regret, and I know those of us who travelled on committee will regret, I don't have my pie charts with me, but we are paying those charges today and, yes, the day after this bill is proclaimed we will continue to pay those charges, the most substantive of which, if required, the CTC, is completely sunsetted once the end of the residual debt is paid off. That's something that is very important.

I think, though, to speak about credibility, and I mean this in a positive sense, and I don't think even our worst detractors would suggest this, though I do accept the notion that, institutionally, new streams of revenue would certainly always be welcome to many who follow this area or who would work in this field, but this minister and this government are all about tax reduction: 66 tax reductions. I think if there was any thought that this is all some sort of backdoor way of finding a few hundred million dollars in revenue in the year 2020, let me put it to rest. That is not the intention.

In fact, many of the tax cuts that the government has passed, whether it's cutting commercial-industrial tax rates here in the city of Toronto, whether it's cutting the corporate-small business tax by 50%, have been enacted to go into effect well into the next millennium because of the priority with which this government holds tax cuts.

The member opposite mentioned, "If I was Minister of Finance, I would love this." Perhaps he would. Perhaps the future Conservative Minister of Finance would. I'll certainly continue to argue, over my time in this place, if I'm privileged to be here at that time, that tax cuts are a good thing. When the Minister of Finance of the day brings forward the budgetary policies of the government in a budget, there will be opportunity to hold that minister accountable for that new revenue. That's something I would expect all members of the Legislature would want to do. But to simply allow the amendment which would leave the door open to one team not having to pay taxes — if Bell Canada didn't have to pay taxes, I suspect Mr. Ipp and Mr. AT&T wouldn't be hanging around and wanting to make investments. Those are just some comments to put on the record.

Mr Conway: I'd just like to make some additional comments. I find it interesting that the spokesman for the Minister of Finance would feel so warm and favourable to the attractions of competition when he sits there happily supporting a policy that systematically does not do the fundamental things that experts have said you've got to do in energy restructuring to get the benefits of competition. The member makes a very strange argument when, on the one hand, he argues for competition, and then throughout the piece supports most of the monopoly protection for Ontario Hydro. He ignores, with his colleagues, the central recommendations of expert panels who have told us that the single biggest impediment to the creative juices of competition is the market power of the main supplier in the province, in this case Ontario Hydro. The government has specifically ruled out in its white paper the single biggest policy change that is required to get the benefit of competition.

1620

If he's concerned about actual experience, he need look no farther than Alberta, at the problems the Klein government is experiencing in years three and four of their so-called deregulated market, because from what I'm hearing the three players that dominate that market are viewed to be still sufficiently so strong as to be keeping a number of new players out on the generation side.

I find it fetching that on this particular matter we get a paean of praise in support of competition from the spokesman for the treasury, but the government of which he's a part steadfastly refuses to accept the fundamental policy ingredient which all people who've looked at this electricity market redesign say you have to have if you're going to get the true and significant benefits of competition for all classes of customers.

The argument that the hydro bill we're now paying fully reflects the obligations of Ontario Hydro is just manifestly not true. The government can say what it wants but there is no person, no credible authority that is going to say — again, today's report. I can tell you that the hydro consumers of Ontario are not paying today for the full cost of the nuclear decommissioning and related costs.

It is interesting that Hydro has told us in recent times that the \$2.5 billion or \$3 billion they've collected from our rates for this particular item has all been spent. I don't doubt that some figure like 35% or 40% of the average hydro bill today reflects debt servicing, but my point remains that the debt-servicing charges we pay through our current rates do not reflect the full measure of the real debt that has to be acknowledged and paid for.

I don't think we ought to insult the intelligence of the people of Ontario in telling them that they are now paying for the full measure of debt retirement obligations in their rates. Mr. Crone's article in the Financial Post today is just yet another reminder of how that is not so.

Mr Baird: The rate freeze.

Mr Conway: When the board of directors at Ontario Hydro tells us, as they told us in their 1997 financial report — let me read it again, page 52, "Notes to the financial statements":

"In 1996" — this is the board justifying a \$6.3-billion writedown in its most recent financial report — "the board of directors of Ontario Hydro used its rate-setting authority to charge the nuclear recovery expenditures plan to be incurred over the period 1997-2001 to the operations in 1996."

They go on to talk about the fact that this is in large part because the government of Ontario has imposed, for reasons we all understand, a five-year rate freeze, and the board of directors is saying to anyone who cares to read the report that because there is a rate freeze, they are having to use their rate-setting authority to essentially park X billions of dollars of cost that by normal accounting standards would be, to a greater extent at least, reflected in the 1997, 1998 and 1999 rates. That's what the Ontario Hydro 1997 annual report tells the world, and it couldn't be clearer.

The reason they're having to do it, they say, is that there is a rate freeze and so they've got no way to recover those costs in that period, from 1997 through to 1999-2000, those costs which will be incurred in the early going. Some of the costs of course are going to be incurred later on, and I accept the point the member for Huron has made that not all of these costs are going to be incurred up front. Certainly some of them are, but they can't be recovered in rates because of the rate freeze, the board of directors tells us.

So don't tell me that the bill I've got in 1998 reflects those costs. They've been parked, particularly the ones that have already been incurred in that period from 1996 to 1998, in what measure I don't know, but there will be hundreds of millions of dollars that will be parked that have already been spent, not reflected in rates. As I say, to have Hydro today say, "Our best estimate is \$18.7 billion" is — well, the member for Huron —

Mrs Johns: But you know that they're not going to take the liability for nuclear disarmament, if you will, for decommissioning costs over 10 or 12 years. That's a 90-year process that was there in the beginning, it's there now and it's going to be there in the end. You're putting some kind of a false slant on this. I understand why you're doing this, but at the bottom line we should have been taking a decommissioning charge and accruing it 15 years ago when you were the minister, we should be doing it now and we should be doing it in 40 years when these plants are existing. This isn't going to be written off over one year, two years, three years, and it's not going to affect the rates over one year, two years, three years either.

Mr Conway: I don't disagree. The member's frustration is understandable. I simply point out that Hydro did collect something in the neighbourhood of \$2.5 billion to \$3 billion for this purpose. I think the phrase they used was, "It was notional." It was collected and spent for other purposes. I'd need to have somebody who comes from one of these high-priced firms like Ernst and Young to explain how that happened, but billions of dollars were collected for this particular —

Mrs Johns: I think \$2 billion or \$3 billion, to set the record straight —

Mr Conway: That's a multiple.

Mrs Johns: — and that certainly wasn't enough. Previous governments should have stopped that from happening and we're going to stop it from happening.

Mr Conway: The declaratory firmness of my friend from Huron is quite impressive, but I simply make the point that it was collected.

Mrs Johns: It's 2.8 billion; I stand corrected.

Mr Conway: I said \$2.5 billion to \$3 billion, so I was in the ballpark. It was collected and it was spent for other purposes. One of the questions I've said to the committee on many occasions — and I think back to what we were promised by the ministry, by the government in June as to what kind of financial picture we would have before this clause-by-clause process began. We don't have that. We're going to get a briefing on the financial architecture of the restructuring soon. I see Mr Dicerni has circulated a memo telling the world, or certainly telling the Ontario Hydro board of directors, that some key decisions about that financial architecture are being made this week, if our committee is going to get some kind of a briefing three weeks from now.

The point I'm making here is that the financial aspects of this are significant, intricate and are clearly going to have an impact on rates. Today's Financial Post article again makes that point as to — let me just quote the article:

"Ontario Hydro's latest estimate of its nuclear decommissioning and waste disposal liabilities is \$18.7 billion."

Now quoting Ken Nash, the vice-president of nuclear waste management at Ontario Hydro, "[The AECB] will be requiring financial guarantees to ensure that the money is available."

The article goes on — where does that money come from? Well, it comes from two sources only: the provincial government, which is already guaranteeing \$32 billion worth of the utility's debt, or the electricity consumers. I'm not just talking about this figure —

Mr Baird: They're the same people.

Mr Conway: Well, it may be. It's not entirely the same people. It depends on how this restructured environment works. I'm fully expecting that some of this government's best and closest friends are going to use their influence and their authority and their connections to avoid as much of this as they can possibly avoid. My concern is that the broad base of residential and farm customers are going to get stuck for a disproportionate amount of the stranded debt and paying it down.

I repeat, the government had an opportunity to come to this committee this summer, as it promised, and give us in some detail a clear picture of the so-called financial architecture. We are well into the clause-by-clause stage with nothing but a promise that we're going to see that on October 26, a day or two before I expect the government will want the bill passed at third reading. That's the government's right, and I'm trying to be reasonable. The government will clearly do what it wants to do.

1630

I am determined to point out in the remaining days of this exercise the gap between promise and performance, to point out that there is now a very, very different agenda than the one we started with. We started with an agenda to make Ontario Hydro competitive and we're not doing that. We're basically now talking about a strong Ontario Hydro that's going to begin the new world order with most of itself intact, with a big question mark around Ontario Hydro Nuclear, and they're going to go off into the United States to do important work. That may be a good thing. That's just not what this policy was advertised as being. It's not what we started out to do.

I repeat that in this particular amendment, to conclude my remarks, I am concerned that the government has finally found itself in a position where after many decades they are going to have, for very interesting and good reasons — the level playing field argument — the right to tax electricity in a significant new way. The result of that will be a major new tax revenue yield to the provincial government and I am concerned, not that we not accept the argument for the level playing field, but I just make the point again that the government itself, the Treasurer, the Minister of Finance, who's a critical referee in all of this, has a huge administrative and pecuniary interest in these decisions and I just don't think he should be allowed to proceed into the happy clover field of hundreds of millions of dollars of new annual tax revenues without some — well, it's more than a clover field, I'll tell you.

Mrs Johns: The \$32 billion is a problem and I don't think you should speak lightly of that.

Mr Conway: Of course it's a problem. The ex cathedra judgments of my friend from Huron about what cannot ever happen on her watch are truly impressive.

Mrs Johns: Thank you very much. I appreciate that.

Mr Conway: I thought infallibility was the doctrine only of Rome, but I see it also applies to certain parts of south Huron, and I hope she's right. Because the argument for my skepticism is that I've just heard that from too many people before on this question. "We can no more have a deficit with the Olympics than I can have a baby," said Jean Drapeau. "The Ontario nuclear commitment will produce the cheapest power that Ontario and the free world has ever seen." "These uranium contracts at Elliot Lake are the best deal that you could imagine." "The 'Preserve It, Conserve It' campaign is the beginning and the end of happiness in the energy services world," and on and on it went.

I hope Helen Johns is right when so many other people from Bob Macaulay to Adam Beck to Darcy McKeough or you name them have been proven wrong.

Mrs Johns: Sean Conway?

Mr Conway: Listen, I've got my sins of omission and commission for which I'm properly upbraided.

But I find that I'm getting so nervous and angry about this because I see it happening again, and this may turn out to be the biggest Hydro hoodwink of them all. I can't believe that's going to happen on Helen Johns's watch, but she will do what she has to do.

I just want to see a provision where the Minister of Finance does not quietly back into a revenue source that is going to produce, in the name of the level playing field, hundreds of millions of dollars of new tax revenue because Hydro will be taxing electricity in significant new ways without the Minister of Finance having to come to the Legislature and clearly articulate what the tax policy is going to be for that revenue once the stranded debt is deemed to be retired, a decision that of course will be made by that selfsame Minister of Finance.

Mr Lessard: With no appeal.

Mr Conway: And with no appeal. Thank you, I say to my friend Mr Lessard. With no appeal.

Mr Lessard: I thought it was interesting to hear the member for Nepean using as a defence and argument against this section that the reason this couldn't turn into a revenue stream for the Treasurer well into the future is because this is a government that supports tax cuts and has been consistent in that message.

Mr Baird: That wasn't my argument.

Mr Lessard: However, to say that they wouldn't want to derive revenue from the sale of energy, I think one needs to take into consideration the other revenue streams that this government has derived. Ask students who have to pay increased tuitions whether they feel as though they've benefited from those tax cuts, seniors who have to pay prescription user fees for their drugs to see whether they've had benefit —

Mrs Johns: Oh, God — Hydro.

Mr Lessard: — and renters who have had to pay higher rent as well, to see whether they've gotten the benefit of those tax cuts.

Mr Baird: I was a student who was promised no tuition and it went up double digits every year you were in power.

Mr Lessard: I can understand the government wanting to take this argument, but I hope they understand my cynicism with respect to this, and the sharing of that cynicism Mr Conway shares.

I think it would have been quite simple for us to avoid the frustration of the debate we're going to through right now if we would have had more information about how the stranded debt was going to be determined and what that amount was going to be before we engaged in clause-by-clause debate, so that we wouldn't have to have this debate essentially in a vacuum, and that's what we were being faced with right now.

I think the skepticism the member has is quite justified. There is going to be a tremendous impact on rates based on those decisions and that determination and I would have liked to have that information before we began this debate. I can't believe that the member for Nepean continues to want to promote this myth that Bill 35 is all about bringing a competitive energy market to Ontario and nothing else. We've heard over and over again that this is legislation that deals with deregulation or reregulation or whatever it is you want to call it, but as long as the bill goes through the way it is, we're not going to have true competition in Ontario. I don't know how he can deny the

submissions that have been made to us over and over again.

I read the most recent Circuit Breaker from the Municipal Electric Association. In that there are a couple of good articles on page 3. One says that the Market Design Committee is going to release its third-quarter interim report on September 30, and here we are on October 7, a week later, and we still haven't got that report. I think that would have been helpful for us in our deliberations.

There's also a letter from Bob Lake, who's the MEA president who attended a convention in Houston, Texas. I don't think he's a really strong opponent of what the government is trying to do, but in his letter he makes this admission and I think it's worth repeating. He says:

"I don't have the perfect answer for these and other complex questions" — they're questions about whether there should be more privatization or deregulation — "but I think you will agree that there is a strong risk that Ontario is moving too quickly towards the goal of deregulation and more private ownership of the electricity business."

I think that Bob Lake is somebody who has some expertise in making those sorts of comments. Why we would want to be in a big rush to get through this clause-by-clause debate with the limited information we have at this point in time is troubling to me. I think that, considering the complete lack of information, the motion for the amendment by Mr Conway is justified.

It's the least we can do, as legislators at this point, to try and protect consumers in the future, after we're long gone from here, from continuing to have to pay additional taxes or user fees or whatever it is you want to call them for energy in Ontario, because I share the member's concern that ultimately it's going to be small residential and farm consumers who are going to end up paying the biggest part of that stranded debt, and that those who have the strength, the ability, the money, the wherewithal, will be able to avoid having to pay their fair share. Until I see some concrete evidence to indicate that won't be the case, I just won't believe it.

1640

Mrs Johns: I hesitate to enter into this because we've gone completely away from the amendment, but I think that something fair needs to be said.

Mr Lessard: John got me on that.

Mrs Johns: I understand that we're lobbying about how we can stand against the government in this bill at this particular point and I understand that that's happening, but I'd like to remind the two members opposite me that to a person, I think, as people came up to the podium here to talk to us over eight days, they said that Bill 35 was necessary, the system wasn't working and there needed to be substantial change.

I don't think we heard from anybody who said the government has moved too quickly. What we heard was that it is too bad that it took so long to move forward on this. We felt we needed to get it right and so it took us time to do this. I think what we heard was, you have to

continue to move because Ontario is uncompetitive in the world marketplace and certainly in the northeastern marketplace and we're losing business, we're losing job opportunities, we're losing investment as a result of not moving forward from this.

Mr Lessard: Let's not leap down into the abyss without knowing what's at the bottom.

Mrs Johns: I also hesitate to say that Mr Conway seems to be judging what the Market Design Committee is going to put out in their third report about market power and how to mitigate it. The Market Design Committee certainly said in their second report that there are ways you can mitigate market power that will allow this market to be a very competitive marketplace, and we look forward to their answers. They talked about bilateral contracts and we moved with our amendment to ensure that there was an ability for bilateral contracts. They talked about leases, they talked about other opportunities, and we have made sure that there is a venue to be able to work with the Market Design Committee to move forward.

What's happening right now in this amendment, to get back to this specific amendment, is that if we move this amendment and at the end of the time frame we take away the PILs, the payments in lieu, that are being paid by the municipal electric utilities, independent small and medium-sized businesses will go bankrupt because they will no longer have a level playing field on which to compete with the municipal electric utilities, and we're just not going to let that happen.

Mr Lessard: I wonder if the parliamentary assistant could give me an answer as to when we can expect the Market Design Committee's report that was due on September 30.

Mrs Johns: I certainly understand that they have agreed on some of the issues. I think the report is close to being printed. I don't know for sure when it's coming out, but I expect it imminently. I would be happy to give you Ron Daniels's number if you'd like to call him and ask him.

The Chair: Further questions and comments? Seeing none, I should put the question. Shall the Liberal amendment to section 88.1 carry? All those in favour? Opposed? The amendment is lost.

We move then to section 89. There are no amendments proposed to section 89. Questions or comments on that section?

Mr Conway: I have a question. I'd like to just do it now. It's for Steve Dorey. I have in my hand a memo from Richard Dicerni, the senior vice-president, corporate and environmental affairs of Ontario Hydro. It's dated September 11, 1998, so it's now four weeks old. I'm happy to make copies available. I want to just read from Mr Dicerni's memo. It is a memo from Mr Dicerni to Ontario Hydro board of directors, entitled "Update to the Restructuring Planning Calendar," talking about the restructuring of Ontario Hydro.

The first point has to do with legislative activities. I'm more interested in the financial matters. Under the sub-

heading, "Financial architecture," Mr Dicerni, the senior vice-president of Ontario Hydro, says on September 11:

"The Ministry of Finance continued to finalize its assumptions regarding the financial architecture of the successor companies. By mid to late September, finance will provide its assumptions on payments in lieu of taxes, dividends and the proposed taxation regime to Ontario Hydro. This information will be used by Hydro to develop the proposed rate orders in early October and to finalize the business plans for the successor companies in early November."

Then a little later on, Mr Dicerni in the same memo says, and I quote:

"Early in the week of October 5, the Ministry of Finance will make a number of key financial decisions for Genco and Servco, including (1) assigning debt; (2) debt-equity ratio; and (3) financial policies. Government will make decisions on (1) governance issues; (2) key elements of market design; and (3) financial architecture by late October."

Could you tell me whether the Minister of Finance has been keeping to the timetable that Mr Dicerni outlined to his board of directors on September 11? Let me read again the first part of that memo. Mr Dicerni tells the board of directors on September 11 that the Ontario Ministry of Finance will be finalizing its assumptions regarding the financial architecture of the successor companies.

Here's the key line: "By mid to late September, finance will provide its assumptions on payments in lieu of taxes, dividends and the proposed taxation regime to Ontario Hydro. This information will be used by Hydro to develop the proposed rate orders in early October...."

Has that work been done consistent with the timetable that Mr Dicerni outlined in that memo of September 11?

Mr Steve Dorey: We're a little behind. The work of the Market Design Committee in its third-quarter report, the work around market power mitigation, is quite complex and will, I think, have a substantial bearing on the financial architecture that we're in the course of putting together. We are, as you are, awaiting that piece. We've obviously been talking to the Market Design Committee and Ontario Hydro about some of the possibilities, but those discussions continue.

We are confident that within the timelines there, late October, early November, we will get the financial architecture done, the basic structures done and be able to provide you with a briefing on our best estimate of stranded debt, the debt-carrying capacities of the new companies and so on. That's where we're at.

Mr Conway: What is your best information as to when the report of the Market Design Committee will be in a polished and finished form?

Mr Dorey: I don't know.

Mr Conway: You don't know that. But that's very important information in terms of the work you're doing.

Mr Dorey: Yes, it's important information.

Mr Conway: I take it that Mr Dicerni's point — let me read it again from his September 11 memo: "Early in the week of October 5" — that's this week — "the

Ministry of Finance will make a number of key financial decisions for Genco and Servco...assigning debt...debt-equity ratio...financial policies." That's what finance was going to do and those were going to be the preconditions of the laying out then of the broader financial architecture.

I take your earlier answer to mean that you are not now in a position to say that you have in fact met that deadline, that time frame, that you are running a bit behind?

Mr Dorey: Yes.

Mr Conway: A week behind, two weeks behind, a month behind?

Mr Dorey: It's difficult to tell but certainly not a month behind. We've made a commitment to you that we will have our best estimates by October 26 and some of those elements you mentioned are key elements to providing that estimate.

1650

Mr Conway: Is it the plan of the Ministry of Finance to advertise more generally all of the good work that you will have done on things like the debt-equity ratios, the assignment of debt to the broader public, or at least the financial and related communities, before this matter is concluded in the Legislature, given the complexity of the questions being raised and answered?

Mr Dorey: At this point, no, that's not our plan.

Mr Conway: Could you tell me where the Ministry of Finance is? Have you received any of the final evaluation reports from the several and star-studded investment banking houses that have been retained by Her Majesty's government to assist on the valuation question?

Mr Dorey: We continue to work with them on a whole host of issues around valuing the corporations. There is not a single report that says, "Here's the valuation." No, we haven't received one but we're working on that.

Mr Conway: When will the taxpayers, who will be paying millions of dollars for these several and star-studded analyses, be able to get a document that they can actually read and understand, with some help, as to what the conclusions of the several and star-studded investment houses concluded around the evaluation question?

Mr Dorey: We don't have a date for releasing that kind of document.

Mr Conway: Is it your plan to release that information into the public domain?

Mr Dorey: Our plan would be to release a summary of the results of that analysis. Some of the work is clearly confidential commercial information, and that's not appropriate.

Mr Conway: When do you —

The Chair: Excuse me, Mrs Johns.

Mrs Johns: It's my understanding we're talking about the application of the Corporations Tax Act. We're in section 89 of the bill.

Mr Conway: That's correct.

Mrs Johns: We had these people here before to make a presentation to us and for us to ask questions, so I'm just wondering if the member opposite can explain to me how this relates to the section on the Corporations Tax Act.

Mr Conway: Again, I don't mean to be difficult, because I don't expect to get the answers that a respectable Legislature would expect before it passed judgment in the final analysis on this bill. The member's point earlier is well taken. I started out as one person who felt clearly that the status quo was not an option. I still believe that very strongly. With every passing day, I get more and more worried and more and more angry about what's happening here. I have a lot of regard for the member, but I'm just not convinced that, on the basis of what I see or, more importantly, what I don't see, I can just simply take bland assurances: "Don't worry. Trust me. Be happy."

This is as important a decision and matter that this Legislature will decide in years, with enormous consequences. I don't offer myself as any kind of an expert, but there is a level at which this exercise is now bordering on pure contempt. That we are being asked to make judgments around the fundamental redesign of the electricity sector, months after the bill was passed, with hardly a scintilla of hard evidence as to what the professional valuers are saying about the successor companies, about the assignment of debt, I tell you, is just breathtaking. If that's the will of this Legislature, then clearly it's the will of the Legislature. But I will say again, I will have no part of this exercise if that's the way I'm going to be treated, because I consider it to be a total, naked, abject abandonment of my responsibilities to the people who sent me here.

You're absolutely right, you and your colleague from Nepean, to be waving around the terrible mistakes of the past and what they mean today. We've got those mistakes because previous legislatures behaved more or less — actually, you've got to go some to find one quite like this. I will say this for the old Denison contract. I think it was into this room that Bill Davis walked on a sunny afternoon and stared everybody in the eye and said, with cameras everywhere, "It's a good deal." There is a lot of evidence that it wasn't a good deal, and there were bright people here, but at least that was done in broad daylight, with good cross-examination around a certain measure of hard data. It turns out that the critics were vastly more right than they were ever given credit for, but I don't fault Mr Davis. Then he took his basic position to the electorate and got a reconfirmation. That's what democratic politics is all about.

What have we got here? We've got a fundamental redesign of one of the core economic and social realities of the province and we've got virtually none of the financial data. It's just breathtaking. I can't imagine, if I went to Exeter to consult with my friend Mrs Johns on the purchase of a farm or a home and I asked for her opinion, in the absence of any information, she would just laugh and tell me to tell the bank or the financial institution to go jump off the nearest bridge. Well, I'm not about to go jump off the nearest bridge without at least a greater understanding of what some of the central financial questions are.

I'm not here to tell people that I've got any great expertise, but I think the Legislature is clearly owed a far

greater respect and far more information than the virtually nothing it has on these critical questions, without which no sensible person could make a judgment one way or the other. In the absence of that information, I don't know why you would embrace something that has these kinds of multi-billion dollar consequences.

Mrs Johns: Because the system is not working, as I said before, and the system needs to have fundamental change. The stakeholders, the people involved and the consumers we've heard from agree that this has to happen. So answer my question, Mr Conway. What does all this line of questioning have to do with the application of the Corporations Tax Act, which is section 89?

Mr Conway: There are certain understandings with which I cannot help my good friend from Huron. There is a certain — well, I'll just leave it at that.

The Chair: Mr Lessard, did you have any questions or comments to this amendment?

Mrs Johns: It's not an amendment; it's a section.

Mr Lessard: As a result of this line of questions I need to ask Mr Dorey what it is that we're going to expect to receive at this briefing on October 26. It was my understanding that we were going to know what the stranded debt was and how it was determined and now I'm not so sure that that is the information we're going to be getting.

Mr Dorey: Yes, that's correct. We will explain to you the magnitude of the stranded debt, the way we've gone about determining it, the size of residual stranded debt and so on, all those key variables, or at least our best estimate done at that time. We can't promise that it will necessarily be absolutely final.

Mr Lessard: Your best estimate, though. You qualify that and you also said that you weren't going have all the information until possibly sometime in November and that's the reason I asked the question.

The Chair: Mrs Johns has a point. We are off. This is a section, not an amendment. I stand corrected. It is a section. Are there any further questions or comments related to this section?

Mr Conway: I will admit, it is more fun and it is much less taxing to hear the member from Exeter read, with that felicitous voice of hers, page after page of government technical amendments. I know —

The Chair: Seeing that you like that so much, perhaps we should move on to the next.

Mr Conway: A more felicitous and euphonious voice I have not heard in a long time.

Mrs Johns: I understand I'm annoying you, but I would like to move on.

Mr Conway: I know I'm annoying you and I should be, and the taxpayers should be. I've said enough and I'm going to let the member go and read until she falls over from the sheer act of reading. Although I must say, this plethora of government amendments on technical matters should just make us all think about what we're not catching on the policy ground. I'm telling you, this is the easy part.

I raise it here because I think it's a central point. It is the government's view that the Legislature, and this committee particularly, should be treated as a mushroom farm, and I understand that, not for the first time. I just don't go happily into the role of a mushroom and that shouldn't surprise anyone.

As I say, it is contempt of the Legislature that we would get virtually nothing on these key financial matters. If it is the government's view, and I suspect it is, we will get a briefing of a general sort on October 26 and the final disposition of the bill will come a day or two later. At one level, you really make my life easy, and I don't intend to be obstreperous. If this is what you want, trust me, this is what you will get and you will wear it, for good or for ill. That's the fun of being in government.

But we're going to sign the mortgage without knowing the interest rate, without knowing the retirement period. The member talks, and I won't read it — I was just looking at the submission made by the Metropolitan Toronto Board of Trade, and again, I didn't hear very many people come to the committee and say that the status quo was an option. It is clearly not an option. But this policy is increasingly a Trojan Horse. It advertises one thing but it's delivering something quite different. That's my rub; that's my fundamental problem, aggravated by the fact that we're going to get none of the financial data, nothing.

1700

The Chair: Further questions and comments to section 89? Seeing none, shall section 89 carry? All those in favour? Opposed? It's carried.

On section 90 we have a government amendment on page 80.

Mrs Johns: I move that clauses 90(1)(a) to (h) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"(a) prescribing modifications to the method of calculating the amount of any payment required by section 83, 84 or 87;

"(b) prescribing amounts for the purpose of clause 86(1)(a);

"(c) prescribing percentages for the purpose of subsection 88(1) and prescribing modifications to the method of calculating the amount of the payment required by section 88;

"(d) deeming a transaction or series of transactions, for the purpose of section 88, to be a transfer to a person of an interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity;

"(e) prescribing transfers to which subsection 88(1) does not apply, subject to such conditions or restrictions as may be specified in the regulations;"

Mr Baird: This deletes the specific regulatory powers of the AGRT, obviously, as we're not going forward with it, and makes a minor amendment with respect to the regulation powers of the transfer tax.

Mr Conway: I would ask the spokesperson from the finance department to use language and not acronyms,

because we're not all as literate in the way that he quite obviously is.

Mr Baird: The adjusted gross revenue tax.

Mr Conway: I have a question, then, for Mr Dorey on section 90, as amended. This is the mechanism — and again, I observe a very significant regulatory power. Everything from Laura Secord's cow to the kitchen sink is possible under this section. Since this regulatory power is the engine that's going to drive the money tree, I have to ask Steve a question. Has there been any modelling done at the Ministry of Finance to simulate — not to simulate, but has there been any modelling done at the Ministry of Finance to show the various yields of these special payments once the full course of the legislation kicks in?

Mrs Johns: Can I just ask, are you talking about the adjusted gross revenue tax that we've just pulled away from?

Mr Conway: I'm talking about section 90. You're amending section 90. I'm just looking at the regulatory power. The Minister of Finance may make regulations prescribing the amounts essentially for the instruments. Knowing what I know about finance departments, they're very good at doing the models. This may have all stopped on June 9, 1995, like a lot of other terrible things did, I'm sure. I know Mike Gourley would never have carried on those bad old practices. But finance departments are famous for modelling on the basis of, "We've got the following instruments that potentially yield X dollars." It's the sort of exercise you do pre-budget.

Have you done any similar modelling looking at the instruments under sections — well, the whole part preceding part VI, really, the special payments. Section 90 essentially talks about the minister's regulatory power, setting the amounts and related issues of those special payments. I've got to believe that you did or are doing some modelling over there as to what the yields might be if you did model A, model B or model C.

Mr Dorey: Modelling these kinds of things under various assumptions is a major or a significant part of the whole financial restructuring exercise, yes.

Mr Conway: Would you be willing to share with the committee any of the models you've developed to date on that, just to give at least myself some indication of what the possibilities here are?

Mr Dorey: I'll check on that.

Mr Conway: I would very much appreciate it if you would check on that, Mr Dorey. You're a smart guy surrounded by very able people, and since we're all taxpayers paying for this good work and we're trying to understand, at least in the macro element, just what the opportunities under section 90 of this bill might afford, I would very much like to see some of the modelling that has been done at finance. Anybody else who wants to speak to this up there I'm more than willing to hear at this point.

Mr Bill McLean: The special payment sections apply to Genco and Servco and the municipal electrical utility payments in lieu of federal and provincial corporate taxes. Part of the exercise is determining what net taxable

revenue a company has and then applying the generally known provincial and federal corporate tax rate to those amounts.

Mr Conway: I'm particularly interested in yield. I always find finance very helpful on these matters. I know you do a lot of good modelling work, so I appreciate Mr Dorey's offer to consider and I will await with bated breath a response, which I hope will be in the positive.

The Chair: Further questions or comments on this amendment? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions and comments on section 90? Seeing none, shall section 90 of schedule A, as amended, carry? All those in favour? Opposed? The section carries.

On section 91 of schedule A, a government amendment on page 81.

Mrs Johns: I move that the definition of "successor employer" in subsection 91(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"'successor employer' means a person who is required to establish a pension plan under subsection 96(1);"

Mr Baird: This amendment seeks to clarify the definition of a successor employer. It's the employer who is required to establish a pension plan, who may not have done so just yet, obviously, as a transitional move.

The Chair: Comments or questions? Seeing none, shall this amendment carry? All those in favour? Opposed? It's carried.

Further questions or comments on section 91? Shall section 91, as amended, carry? All those in favour? Opposed? Section 91 carries.

On section 92, schedule A, a government amendment on page 82.

Mrs Johns: I move that subsections 92(7) and (8) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by,

(a) striking out "this part" in the first line of subsection (7) and substituting "this section";

(b) striking out "this part" in the fifth line of clause (7)(a) and substituting "this section";

(c) striking out "this part" in the fifth line of clause (7)(b) and substituting "this section"; and

(d) striking out "this part" in the third line of subsection (8) and substituting "this section."

Mr Baird: This amendment just seeks to clarify that a worker wouldn't lose pension credit rights in the transition.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions and comments on section 92? Shall section 92, as amended, carry? All those in favour? Opposed? Section 92 carries.

Section 93: There's a government amendment on page 83.

1710

Mrs Johns: I move that section 93 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsections:

"Refund of contributions

"(3) Despite subsection 78(1) of the Pension Benefits Act, the administrator of the FCPP shall refund to the Financial Corporation, without interest, the contributions made by Ontario Hydro that were required to pay the normal cost of the pension plan in respect of service after March 31, 1998 and before the day that subsection (2) comes into force.

"Unfunded liability or solvency deficiency

"(4) If a report on the FCPP filed with the superintendent reveals a going concern unfunded liability or solvency deficiency or both, each successor employer shall pay to the pension fund for the FCPP, as its share of the total amount of each monthly special payment required as a result of the report, the amount determined by the plan actuary in accordance with the following formula:

" $(A/B) \times C$

"in which,

"A' is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of members and former members of the FCPP who will become members or former members of the successor plan established by the successor employer;

"B' is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of members and former members of the FCPP; and

"C' is the total amount of the monthly special payment required as a result of the report.

"Definition

"(5) In subsection (4),

"actuarial liabilities' means,

"(a) in the case of a going concern valuation, the going concern liabilities; and

"(b) in the case of a solvency valuation, the solvency liabilities."

Mr Baird: This, among other things, results from the collective agreement that was ratified between Ontario Hydro and the Power Workers on June 20 and provides for reduction or suspension of employer contributions to the pension plan effective April 1, 1998.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions and comments to this section? Shall section 93, as amended, carry? All those in favour? Opposed? Section 93, as amended, carries.

Section 94: There are no amendments. Questions or comments? Shall section 94 carry? All those in favour? Opposed? It carries.

Section 95: There is a government amendment found on page 85.

Mrs Johns: I move that subsection 95(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "Subsections 92(4)" in the first line and substituting "Subsections 92(5)."

Mr Baird: Bill 35 cites the wrong subsection number, and this corrects that error.

The Chair: Questions or comments? Seeing none, shall this amendment carry? Opposed? It carries.

Shall section 95, as amended, carry? All those in favour? Opposed? It carries.

Section 96: A government amendment is found on page 86.

Mrs Johns: I move that subsections 96(1) and (2) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

“Successor pension plans

“(1) The IMO, the Generation Corporation, the Services Corporation and the Electrical Safety Authority shall each establish a pension plan to provide pension benefits and ancillary benefits for the following persons:

“1. Its employees whose employment is transferred to it by or pursuant to an order made under section 108 and who are, or are entitled to be, members of the FCPP before their employment is transferred.

“2. Such other employees as it considers appropriate.

“3. Such former members of the FCPP as the Financial Corporation, in its sole discretion acting in its capacity as employer, designates for transfer to the pension plan.

“4. Such other persons as this part may require.

“Selection of former members

“(2) In determining which former members of the FCPP are to be transferred to a successor pension plan, the Financial Corporation shall comply with the following rules:

“1. All former members of the FCPP must be transferred to the successor pension plans.

“2. The Financial Corporation shall consider which successor employer, if any, would most likely have become the employer of each former employee of Ontario Hydro (assuming, only for the purposes of this rule, that the former employee had been employed by Ontario Hydro immediately before the date on which employees of Ontario Hydro are transferred to the successor employers by or pursuant to orders made under section 108).

“3. If the Financial Corporation concludes that a former employee would most likely have remained an employee of the Financial Corporation or a subsidiary of the Financial Corporation, the Financial Corporation shall transfer the former member to the successor pension plan established by the Generation Corporation.

“Status of plan

“(2.1) During the period that employees of the subsidiary of the Financial Corporation established under section 102.1 are members of the pension plan established under subsection (1) by the Generation Corporation, that plan shall be deemed not to be a multi-employer pension plan for the purposes of the Pension Benefits Act.”

Mr Baird: This amendment basically requires the Electrical Safety Authority to establish a pension plan and gives the administrative requirements thereof.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? It carries.

A government amendment on page 88.

Mrs Johns: I move that subsection 96(5) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out “and may do so after the date has passed” in the fourth line.

Mr Baird: This amendment just ensures that no double pension contribution happens during the change. It's a technical amendment.

Mr Conway: I just raise a question here, and it fits into the general area, and I have a question to Mrs Johns. A few days ago I got a call from the society — I'm sure you did too — from John Wilson. They were concerned and actually they were proposing a new amendment to part VII, section 104.1.

I don't understand the intricacies of the Pension Benefits Act, but this is the concern of the Society, which is, as you know, the professional group at Hydro, and I want a response generally as to whether in the view of the government this is deemed to be a problem. This has to do with the pension plans of successor companies. I'll just read in part from Mr Wilson's letter to me of September 29:

“As Bill 35 now reads, restrictions would be placed on pension plans established by Ontario Hydro's successor companies that go beyond the provisions of the Pension Benefits Act.”

The proposed amendment which the society advanced to me, and I'm sure to you as well, removes those restrictions that allow Ontario Hydro's successor pension plans to be treated the same as other pension plans under the Pension Benefits Act.

Has there been any discussion around the government as to whether this is a matter to which they want to turn their attention, or is there a view that it is a problem in the way that the society sees it as a problem?

Mr Baird: I can speak to that for a moment. Ontario Hydro is currently the administrator and sole sponsor of the pension plan and has been for many years. I don't think Bill 35 changes that fact. I know this issue has been discussed for many years with respect to governance, but at this stage there hasn't been any agreement. It certainly isn't something that we've been convinced that we would want to change through Bill 35 at this time.

Mr Conway: I appreciate that.

The Chair: Further questions and comments? Shall the amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 96, as amended, carry? All those in favour? Opposed? Section 96 carries.

Section 97: A government amendment is found on page 89.

Mrs Johns: I move that subsections 97(1) and (2) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

“Members of successor plans

“97(1) An employee of a successor employer who has established a successor pension plan becomes a member of the successor pension plan on the following date:

"1. If the employee was a member of the FCPP immediately before becoming employed by the successor employer, the later of the following dates:

"i. The date on which he or she becomes employed by the successor employer.

"ii. The commencement date for the plan.

"2. If, under the terms of the successor pension plan, the employee is required to be a member of the plan, the latest of the following dates:

"i. The date on which he or she becomes employed by the successor employer.

"ii. The date on which, under the terms of the successor pension plan, he or she is required to become a member of the plan.

"iii. The commencement date for the plan.

"3. If, under the terms of the successor pension plan, the employee is required to become a member of the plan after meeting certain conditions, the later of the following dates:

"i. The date on which he or she meets those conditions.

"ii. The commencement date for the plan.

"4. If, under the terms of the successor pension plan, the employee is entitled, but not required, to become a member of the plan after meeting certain conditions, the later of the following dates:

"i. The date on which he or she becomes a member of the plan.

"ii. The commencement date for the plan."

1720

Mr Baird: Basically Bill 35 did not take into account the fact that a small number of employees would still be on probation and not required to join the pension plan on the first day of their employment and this just makes some amendment in that area.

The Chair: Further questions or comments? Seeing none shall this amendment carry? All those in favour? Opposed? The amendment carries.

Further questions or comments to section 97? Shall this section carry then as amended? Opposed? This section carries.

Sections 98 and 99 have no amendments proposed to these sections. Any questions or comments to these two sections? Then shall sections 98 and 99 carry? All those in favour? Opposed? They carry.

Section 100, a government amendment found on page 91.

Mrs Johns: I move that subsection 100(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "Subsections 96(4)" in the first line and substituting "Subsections 96(3)".

Mr Baird: This is to correct an error in terms of identifying a subsection.

The Chair: Further questions or comments then on this section? Seeing none, shall this amendment carry? All those in favour? Opposed? This section carries.

Shall subsection 100 as amended carry? All those in favour? Opposed? It carries.

There is a new section proposed, 100.1, government amendment on page 92.

Mrs Johns: I move that the Electricity Act, 1998, as set out in Schedule A to the bill, be amended by adding the following section:

"Reciprocal transfer agreements

"100.1(1) this section applies with respect to the pension plans referred to in subsections 95(1), 96(1) and 100(1).

"Same

"(2) The administrators shall ensure that reciprocal transfer agreements between each of the pension plans are entered into and filed under the Pension Benefits Act.

"Same

"(3) The reciprocal transfer agreements may be bilateral or multilateral.

"Dispute resolution

"(4) If the administrator of the pension plan fails to enter into a reciprocal transfer agreement with the administrator of another pension plan before the prescribed date, the matters remaining in dispute between them shall be resolved in accordance with such requirements as may be prescribed.

"Regulations

"(5) The Lieutenant Governor in Council may make regulations,

"(a) prescribing, for the purpose of subsection (4), dates applicable to pension plans that are specified by the regulations;

"(b) governing the resolution of matters remaining in dispute between the administrators of specified pension plans after the prescribed date.

"Costs

"(6) The costs of dispute resolution after the prescribed date shall be borne equally by the applicable pension plans and are payable out of the pension funds of those plans."

Mr Baird: This amendment basically requires that the successor employees of Ontario Hydro, be that Genco, Servco, the IMO, Independent Market Operator, the ESA, Electrical Safety Authority, enter into reciprocal transfer agreements with each other, whether they be bilateral or multilateral.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? The amendment carries.

We move now to section 101, the government amendment found on page 94.

Mrs Johns: I move that subsection 101(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"FCPP membership temporarily extended

"(1) In any of the following circumstances, an employee of a successor employer is a member of the FCPP until the commencement date for the applicable successor plan:

"1. The employee was a member of the FCPP immediately before becoming employed by the successor employer.

"2. The employee would be required to be a member of the FCPP, if the employee were employed by the Financial Corporation.

"3. The employee would be required to be a member of the FCPP after meeting certain conditions, if the employee were employed by the Financial Corporation. The employee meets those conditions before the commencement date.

"4. The employee would be entitled, but not required, to become a member of the FCPP after meeting certain conditions, if the employee were employed by the Financial Corporation. The employee becomes a member of the FCPP before the commencement date."

Mr Baird: This is another amendment to provide for the transition from Ontario Hydro to the successor employer so that people's pension rights continue until the new plan is established.

The Chair: Questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Shall section 101, as amended, carry? All those in favour? Opposed? Carried.

Section 102, there are no amendments proposed. Questions or comments? Shall this section carry? All those in favour? Opposed? This section carries.

A new section proposed by the government on page 95.

Mrs Johns: I move that part VII of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Subsidiary to act as agent of Financial Corporation

"102.1(1) The Financial Corporation shall establish a subsidiary and shall retain the subsidiary to act as the agent of the Financial Corporation in its capacity as administrator of the FCPP.

"Application of section 67

"(2) Section 67 does not apply to the subsidiary established under subsection (1).

"Employees

"(3) The employees of the subsidiary shall be deemed not to be civil servants, crown employees or public servants for the purpose of the Public Service Act or any other act.

"Application of subsections (5) and (6)

"(4) Subsections (5) and (6) cease to apply when the subsidiary is no longer retained for the purpose referred to in subsection (1).

"Participation in FCPP

"(5) The following rules apply until the commencement date for the successor pension plan established by the Generation Corporation:

"1. The employees of the subsidiary are, or are entitled to be, members of the FCPP on the same basis as employees of the Financial Corporation.

"2. The subsidiary is an employer who is required to make contributions to the pension fund for the FCPP.

"3. Section 102 applies, with necessary modifications, with respect to the rights and duties of the Financial Corporation and the subsidiary.

"Participation in successor pension plan

"(6) The following rules apply on and after the commencement date for the successor pension plan established by the Generation Corporation:

"1. The employees of the subsidiary are, or are entitled to be, members of the successor pension plan established by the Generation Corporation.

"2. Section 97 applies, with necessary modifications, with respect to the employees of the subsidiary.

"3. The subsidiary is an employer who is required to make contributions to the pension fund for the successor pension plan.

"4. Section 102 applies, with necessary modifications, with respect to the rights and duties of the Generation Corporation and the subsidiary."

Mr Baird: This amendment is in relation to Finco's requirement to create a pension subsidiary to act as agent or administrator of their pension plan and various administrative aspects of that.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Moving now to section 103, a government amendment found on page 97.

Mr Baird: I move that the French version of the definition of "A" in subsection 103(3) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "avant qu'ils ne" in the 12th line and substituting "antérieur au moment où ils."

This is a technical amendment with respect to the French translation.

The Chair: Questions or comments? Shall the amendment carry? All those in favour? Opposed? It's carried.

A government amendment on page 98.

Mrs Johns: I move that subsections 103(6) and (7) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Dispute resolution

"(6) If the administrators do not enter into a transfer agreement before the prescribed date, the matters remaining in dispute between them shall be resolved in accordance with such requirements as may be prescribed.

"Regulations

"(7) The Lieutenant Governor in Council may make regulations,

"(a) prescribing, for the purpose of subsection (6), dates applicable to pension plans that are specified by the regulations;

"(b) governing the resolution of matters remaining in dispute after the prescribed date.

"Costs

"(8) The costs of dispute resolution after the prescribed date are payable out of the pension fund for the FCPP."

1730

Mr Baird: This amendment provides for deadlines for reaching agreement on the division and transfer of the pension assets.

The Chair: Further questions or comments? Shall the amendment carry? All those in favour? Opposed? The amendment carries.

Shall section 103, as amended, carry? All in favour? Opposed? That section carries.

Section 104, a government amendment found on page 99.

Mr Baird: I move that the French version of paragraph 1 of subsection 104(2) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "avant qu'ils ne" in the seventh and eighth lines and substituting "antérieur au moment où ils."

This is just a French clarification.

The Chair: All those in favour? Opposed? That amendment carries.

A government amendment found on page 100.

Mrs Johns: I move that paragraph 2 of subsection 104(2) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out.

Mr Baird: Basically this provision is no longer required as it's now covered in paragraph 1 of subsection 104(2).

The Chair: Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 104, as amended, carry? All those in favour? Opposed? This section carries, as amended.

Section 105, there are no amendments proposed. Shall section 105 carry? All those in favour? Opposed? Section 105 carries.

Section 106, we have a government amendment found on page 101.

Mrs Johns: I move that subsection 106(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by,

(a) striking out "subsection 25(3) or (4)" in the second line of clause (e) and substituting "subsection 25(3), (4) or (6)"; and

(b) adding the following clauses:

"(e.1) prescribing the amount of electricity referred to in the definition of 'low-volume consumer' in subsection 25(9);

"(m.1) deeming a reference in any act to Ontario Hydro to be a reference to a person or other entity specified in the regulations, subject to such conditions as may be prescribed by the regulations;"

This is a consequential amendment as a result of our changes to subsections 25(9) and 2(3) where we talk about a low-volume consumer. So these are just consequential amendments.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

We have an NDP amendment. Do we have unanimous consent to stand down the NDP motion found on page 102? If we do that, just so you know, we have to stand down all amendments to that section. Do I have unanimous consent for that?

Mrs Johns: No.

The Chair: Then we shall move on.

Any questions or comments on the complete section 106? Shall section 106, as amended, carry? All those in favour? Opposed? That section carries.

Section 107, there are no amendments proposed. Questions or comments? Shall section 107 carry? All those in favour? Opposed? This section carries.

Section 108, we have a government amendment found on page 103.

Mrs Johns: I move that section 108 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by,

(a) inserting "the subsidiary of the Financial Corporation established under section 102.1, Her Majesty in right of Ontario" after "Electrical Safety Authority" in the sixth and seventh lines of subsection (1);

(b) Striking out "or" at the end of the English version of clause (5)(d); and

(c) adding the following clauses to subsection (5):

"(f) the subsidiary of the Financial Corporation established under section 102.1; or

"(g) Her Majesty in right of Ontario."

This is a consequential amendment that takes into effect previous changes that we've had with the Electrical Safety Authority and it also takes into account some issues on the subsidiary of the Financial Corp that were finance amendments in the previous section.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 108, as amended, carry? All those in favour? Opposed? This section carries.

We have a new section proposed by the government, section 108.1.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Notice of date

"108.1(1) The minister shall, within 90 days after the date that a transfer order is made or amended, publish notice of the date in the Ontario Gazette.

"Amendments

"(2) Notice of the date that a transfer order was amended shall identify the transfer order that was amended.

"Non-compliance

"(3) Non-compliance with this section does not affect the validity of a transfer order or any amendment to a transfer order."

What we were concerned about here was that we were preparing transfer orders to move assets and liabilities from the old Ontario Hydro, which will now become the Financial Corp, through to Generation, IMO, all the companies we listed before that will come out of Ontario Hydro, and we wanted to ensure that the public was aware of how those transfers were happening, so they're being required to be gazetted in one of the sections, and we're going to keep records of those transfer orders.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Moving now to section 109, there are no amendments to pose.

Questions or comments? Shall section 109 carry? All those in favour? Opposed? Section 109 carries.

A new section proposed by the government, section 109.1.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

“Approvals under the Power Corporation Act

“109.1 If the approval of the Lieutenant Governor in Council was at any time required under the Power Corporation Act or a predecessor of that act with respect to an asset, liability, right or obligation that is to be transferred by or pursuant to a transfer order, the approval shall be deemed to have been given.”

We're trying to ensure that the assets follow through to the corporations, so as we're transferring for this transfer order, we have given the right for these to be deemed to have been given.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

On sections 110 and 111, there are no amendments proposed. Questions or comments? Shall sections 110 and 111 carry? All those in favour? Opposed? Those sections both carry.

Section 112, there's a government amendment proposed, page 106.

Mrs Johns: I move that subsections 112(1) and (2) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

“Province may assume obligations in return for securities

“(1) If, pursuant to a transfer order, the Generation Corporation or the Services Corporation issues securities to Ontario Hydro, the Lieutenant Governor in Council, by order,

“(a) may authorize Her Majesty in right of Ontario or in agent of Her Majesty in right of Ontario to assume obligations of the Generation Corporation or the Services Corporation under the securities; and

“(b) may require the Generation Corporation or the Services Corporation to issue, and may authorize Her Majesty in right of Ontario or an agent of Her Majesty in right of Ontario to acquire additional securities in such amount as the Lieutenant Governor in Council may specify.

“Exchange of securities

“(2) The Lieutenant Governor in Council may by order require the Generation Corporation or the Services Corporation to issue securities to Ontario Hydro in exchange for securities it previously issued to Ontario Hydro pursuant to a transfer order.

“Application of section 28 of the Financial Administration Act

“(2.1) Section 28 of the Financial Administration Act does not apply to anything done pursuant to an order under subsection (1) or (2).

1740

Mr Baird: This amendment expands the entities through which the province can indirectly enter into a debt-for-equity swap with Genco or Servco to include crown agents other than Finco.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Shall section 112, as amended, carry? All those in favour? Opposed? That section carries.

On section 113, there are no amendments proposed. Questions or comments? Shall this section carry? All those in favour? Opposed? This section carries.

Section 113.1, a government amendment, found on page 107.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

“Statements in registered documents

“113.1 (1) A statement, in a registered document to which a person referred to in subsection (2) is a party, that land described in the document was transferred to the person from Ontario Hydro by or pursuant to a transfer order, and any other statement in the document relating to the transfer order, shall be deemed to be conclusive evidence of the facts stated.

“Persons referred to in subsection (1)

“(2) The persons referred to in subsection (1) are:

“1. The Generation Corporation or a subsidiary of the Generation Corporation.

“2. The Services Corporation or a subsidiary of the Services Corporation.

“3. The IMO.

“4. The board.

“5. The subsidiary of the Financial Corporation established under section 102.1.

“6. Her Majesty in right of Ontario.

“7. The Electrical Safety Authority.

“8. Any other person prescribed by the regulations.

“No new interest

“(3) Subsection (1) does not give any person an interest in land that Ontario Hydro did not have.

“References to unregistered transfer orders

“(4) A document that is otherwise capable of being registered or deposited under the Registry Act or registered under the Land Titles Act and that refers to an unregistered transfer order may be registered or deposited under the Registry Act or registered under the Land Titles Act despite any provision of those acts.

“Definitions

“(5) In this section,

“‘land’ means land, tenements, hereditaments and appurtenances, or any estate or interest therein; (“biens-fonds”)

“registered document” means a document registered or deposited under the Registry Act or registered under the Land Titles Act. (“document enregistré”)

What we’re trying to do here is facilitate registration of these lands under the Registry Act, but we’re also trying to ensure that they’re being transferred to Ontario Hydro’s successor companies, if you will. That’s why we’ve specifically outlined them here in subsection (2).

The Chair: Questions or comments? All those in favour of this section? Opposed? This amendment carries.

Section 114, there are no amendments proposed. Questions or comments? Shall section 114 carry? All those in favour? Opposed? This section carries.

Section 115, there’s a government amendment found on page 109.

Mrs Johns: I move that section 115 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

“Release of Ontario Hydro

“(2) Subject to subsection (1), the transfer of a liability or obligation under this part releases Ontario Hydro from the liability or obligation.”

As these assets are being transferred from Ontario Hydro to the successor corporations, we’re trying here to ensure that the liabilities attached to those assets move with the assets and that no liabilities are left with the old Ontario Hydro.

The Chair: Questions or comments?

Mr Conway: I feel very confident that with the aggressive leadership of Dr Farlinger, it will not be the leaving behind of assets that will be the issue facing the nation, but it will be the leaving behind of a considerable bag of debt that will occupy the minds of the good burghers of Clinton and Exeter. With that I will —

Mrs Johns: I want to assure the member opposite that it’s the assets and the liabilities associated with those assets that we’re moving forward. I know he’s talking about the stranded debt, however, and we certainly will do everything to keep him apprised of the stranded debt.

Mr Conway: I just think we will be awakening and finding all manner of discovery that will even perhaps undermine the Gibraltar-like confidence of the honourable member in the efficacy of what she is embracing here.

Mrs Johns: You’re awake again. You’ve come alive.

Mr Conway: Listen, some members take great pride in being mail persons; other members seem to take delight in being readers. To each, his or her own.

The Chair: Questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 115, as amended, carry? All those in favour? Opposed? The amended section is carried.

Section 116, a government amendment.

Mrs Johns: I move that section 116 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out “deemed to have been commenced” in the seventh line and substituting “continued.”

We wanted to ensure here that we had stronger wording. There were some questions by people who came

forward and were trying to ensure that existing actions will, and can proceed.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 116, as amended, carry? All those in favour? Opposed? This section carries.

Section 117, there are no amendments proposed. Questions or comments? Shall section 117 carry? All those in favour? Opposed? This section carries.

Section 118, a government amendment found on page 111.

Mrs Johns: I move that subsection 118(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

“Certain rights not affected by transfer

“(1) A transfer by or pursuant to a transfer order,

“(a) shall be deemed not to constitute,

“(i) a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance,

“(ii) a breach of any act, regulation or municipal bylaw, or

“(iii) an event of default or force majeure;

“(b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

“(c) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

“(d) shall be deemed not to give rise to any estoppel.”

Some of those words are pretty technical so I asked the lawyers about it. What we’re trying to do here is to ensure that the transfer order doesn’t breach any kind of statute. We’ve added in subclause 118(1)(a)(ii) “act, regulation or municipal bylaw,” and in clause (b) we’ve added “a breach, termination, repudiation or frustration.” So we’ve added those to it to ensure that this transfer order does not allow anyone to enter into a breach of contract.

The Chair: Questions or comments?

Mr Conway: Is Shari Lewis dead or alive? She died, didn’t she?

Mrs Johns: She just died and so did Lambchop.

Mr Conway: I’m not sure.

The Chair: Back to the bill. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

We have an NDP amendment on page 112.

Mr Lessard: I move that section 118 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following subsection:

“Aboriginal claims unaffected

“(3) An aboriginal claim against the crown or against Ontario Hydro is not affected by,

“(a) a transfer by or pursuant to a transfer order; or

“(b) the sale of an asset of Ontario Hydro.”

The reason for this amendment is as a result of a submission that we received in Sudbury from Wanapitei which indicated they had a grievance with Ontario Hydro

with respect to flooding of their lands. This was a grievance that hadn't been resolved. It never resulted in any court proceedings. At the time we didn't have an answer whether that was something that would be covered under the definition of "liability" in section 108 of the bill. For further clarification and protection of that grievance for aboriginal land grievances, for lack of a better word, this amendment is being put forward so that in the event there may be some ongoing discussions for compensation for land claims for the flooding of aboriginal lands, those grievances, even though they may not be considered as claims, would still go with any transfers and that the liability that may come about in the future can't be avoided.

1750

Mrs Johns: I think we were all moved by the Wanapitei presentation. I've asked our lawyers to read the presentation by them and to assure us that their concerns are taken forward in Bill 35, so I'd like to hear from the lawyers on this, please.

Ms Cynthia Brandon: The transfer order provisions provide for the transfer of liability. The term "liability" is a very broad word and would include contingent liability. It doesn't have to be an action that's already started.

Mr Conway: Excuse me, these are lawyers for whom?

Mrs Johns: Energy, science and technology.

Ms Brandon: So it does not have to be an action that had already been commenced in order to transfer it. The transfer orders will speak to the transferring of the contingent liability to specify against whom that claim may be enforced. That's a decision that actually could still be made in the future when the transfer order itself is done. It's not a question of whether liability includes contingent liability; yes, it can. With respect to the amendment, the transfer orders aren't transferring any of the crown's liability at all. It would be a liability of Ontario Hydro that would be transferred. So that wouldn't be a concern or shouldn't be a concern. It's the potential to transfer the crown liability.

With respect to if it's a policy decision whether the liability or the contingent liability would be transferred, as I say, it's a decision that can be made when the transfer orders are actually done, but I believe the thought is that the liability should perhaps most appropriately follow the assets, so whoever is realizing on benefit of the assets should also be responsible for the liability that flows with them.

Mr Lessard: Just to follow up on that, I'm satisfied that contingent liability is included in the word "liability," but does a contingent liability need to be specified in the transfer order or can a contingent liability continue to exist without anyone being aware of it?

Ms Brandon: I believe it can continue to exist, but I think with the greater certainty you'd want, it should probably be something that is addressed in a transfer order when it's prepared.

Mr Lessard: That's part of the reason Wanapitei raised it and part of the reason we've raised it here today, so that in the future, if there is a transfer order that's

made, with respect to these lands at least, people are aware that this grievance is still outstanding and needs to be taken into consideration.

Mrs Johns: I'd like to add a question on this. On our amendment, which said that in a transfer order the liability followed the assets, does that amendment take into consideration Wanapitei's concerns and are they covered there so that if they have a contingent liability now, they will have someone to go after to be able to remedy that contingent liability?

Ms Brandon: The amendment that we made to section 115, that new subsection we added, has to be read in context along with subsection (1). Subsection (1) gives the ability to the LGIC to set out against whom the liability should be enforced. So the amendment we've made is actually more of a clarification in terms of where we transfer it on. It is in fact transferred on and the liability would no longer remain with Ontario Hydro, to become Ontario Hydro Financial Corp.

I think to answer your question, you have to read both subsections (1) and (2) together to see what would happen with the liability on the transfer order.

Mrs Johns: Can I just extract from that that Wanapitei is protected?

Ms Brandon: Wanapitei can be protected in the drafting of the transfer order.

Mr Conway: As they would say on the BBC: "End of news. Here again are the main points." What are the main points of the protection that the Wanapitei have?

Ms Brandon: With respect to the transfer orders, what can be transferred can include contingent liability because the word "liability" in and of itself is so broad. The transfer orders can set out very clearly what is being transferred and against whom with respect to liability that right should be enforced.

Mr Conway: Are you essentially saying that Mr Lessard's motion here is redundant, given the changes the government introduced elsewhere in the package? I must say, I'm not particularly —

Ms Brandon: I can say with respect to the aboriginal claim against the crown, it's not necessary at all because the transfer orders do nothing with the crown's liability. With respect to saying that it doesn't affect a claim against Ontario Hydro, and leaving aside that if it were going to be adopted, I'm not sure really what aboriginal claims would mean to make it clearer or what it means to say it's not affected by, but I assume what that meant would be that it was going to stay with Ontario Hydro, which would become Ontario Hydro Financial Corp. We have to say that I don't believe that's necessarily the policy that will be pursued.

Mr Conway: But I'm left —

The Chair: I'm sorry. I'm going to interrupt because the House is rising and some of us have to be in the House again at 6:30, so I think we should end our discussion and we'll come back to that.

Mr Conway: We'll come back to this.

The Chair: The question is, are we coming back to this tomorrow or are we coming back to this next Tuesday? Any further discussion?

Mr Lessard: I've put forward the motion and we can vote on it. But in the proceedings on September 28 this is what the Chair stated: "Let's say we're going to have our fifth day on Thursday, October 8. We can book for that. If we see that there is a problem and if members want to note that to me, then perhaps we can revisit it, but at this point we'll tentatively book that."

I got in touch with the clerk last Thursday and indicated that I had a problem with tomorrow afternoon. I'm just asking that that be rescheduled. I think it's a reasonable request considering the comments the Chair made. If upon revisiting that, the government doesn't want to take into consideration my reasonable request, then so be it.

The Chair: Further discussion or comments?

Mr Conway: I have no problem accommodating the member from Riverside, my always agreeable self.

Mr Baird: Madam Chair, this is by way of trying to be of assistance. I think we're scheduled at 4:30 to go into time allocation and vote on the amendments, as they are deemed to have been made. Would it be helpful — I'm just trying to find a way that would help the member — that at 12 o'clock it could be deemed to be 4:30 and in that way we could be finished by 1:30 when the House went into session? We have an approximate amount of time for discussion and debate, but that way the critic from the New Democratic Party could be here.

The Chair: The time allocation motion says "following routine proceedings."

Mr Baird: We could, at 12 o'clock, deem it to have been, if there's unanimous consent, and if not —

The Chair: I don't think the committee has the power to do that. Even if we did want to do it, I don't think we have the power to do it.

Mr Galt: So possibly the comments you made were in good faith at the time but out of order? Is that my —

The Chair: No.

Mr Conway: Now he's taking to insulting you, Brenda.

Mr Galt: No, no. I would have probably made the same ones under the circumstances, but now understanding it's legislated —

The Chair: The only thing that can be changed is the day we meet. We can either meet tomorrow from 9 to noon or at 3:30 through to finish the day. So it's only a matter of day change.

Mr Baird: Could we do this and ignore the clock at 12 o'clock and then just vote on the amendments —

The Chair: No.

Interjections.

Mr Galt: Madam Chair, I've already made all kinds of changes just to accommodate the timing that this is scheduled for and —

The Chair: OK, I'm going to put it to a vote. The motion is placed that we don't meet tomorrow, that we meet next — what was your motion?

Mr Lessard: I think to comply with the — I guess it doesn't need to be a Thursday. I was saying next Wednesday.

The Chair: It could be Tuesday?

Mr Lessard: Tuesday.

The Chair: All right. That's the motion on the floor. All those in favour of that motion? Opposed? It's lost. Sorry.

We're going to reconvene tomorrow morning at 9 o'clock, but we will be meeting in room 2 next door.

The committee adjourned at 1800.

CONTENTS

Wednesday 7 October 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson* /

Loi de 1998 sur la concurrence dans le secteur de l'énergie,

projet de loi 35, *M. Wilson* R-477

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Napanee PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Hon Jim Wilson (Simcoe West / -Ouest PC)

Also taking part / Autres participantes et participants

Ms Cynthia Brandon, counsel, Legal Services Branch,

Ministry of Energy, Science and Technology

Mr Steve Dorey, ADM and chief economist,

Office of Economic Policy, Ministry of Finance

Mr Bill McLean, senior policy analyst,

Taxation Policy Branch, Ministry of Finance

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Doug Beccroft, legislative counsel



**Legislative Assembly
of Ontario**
Second Session, 36th Parliament

**Assemblée législative
de l'Ontario**
Deuxième session, 36^e législature

**Official Report
of Debates
(Hansard)**

Thursday 8 October 1998

**Journal
des débats
(Hansard)**

Jeudi 8 octobre 1998

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Energy Competition Act, 1998

**Loi de 1998 sur la concurrence
dans le secteur de l'énergie**

**Chair: Brenda Elliott
Clerk: Donna Bryce**

**Présidente : Brenda Elliott
Greffière : Donna Bryce**

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Thursday 8 October 1998

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Jeudi 8 octobre 1998

The committee met at 0907 in committee room 2.

ENERGY COMPETITION ACT, 1998

LOI DE 1998 SUR LA CONCURRENCE
DANS LE SECTEUR DE L'ÉNERGIE

Consideration of Bill 35, An Act to create jobs and protect consumers by promoting low-cost energy through competition, to protect the environment, to provide for pensions and to make related amendments to certain Acts /
Projet de loi 35, Loi visant à créer des emplois et à protéger les consommateurs en favorisant le bas prix de l'énergie au moyen de la concurrence, protégeant l'environnement, traitant de pensions et apportant des modifications connexes à certaines lois.

The Chair (Mrs Brenda Elliott): We're going to call the standing committee on resources development to order. As I recall, we were in the process of discussing the NDP amendment to subsection 118(3). Is there any further discussion on this?

Mrs Helen Johns (Huron): What I think we heard yesterday was that any liabilities the aboriginals have are contingent liabilities and they will be covered by the transfer order, and the transfer orders will be moved to the successor companies. I want to ensure that this is the policy we're hearing from the Ministry of Energy, Science and Technology.

Ms Cynthia Brandon: Yes, it is.

Mrs Johns: I think this amendment is covered in the bill we have before us, so we'll be voting against it.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment is lost.

Further questions or comments to section 118? Shall section 118, as amended, carry? All those in favour? Opposed? This section carries.

Section 119: We have a government amendment proposed on page 113.

Mrs Johns: I move that section 119 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out the portion before clause (a) and substituting the following:

"119. Subject to subsection 118(2), nothing in this act and nothing done by or pursuant to a transfer order creates a new cause of action in favour of,"

The new section is subject to subsection 118(2), and that's the section on exempt contracts.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions or comments to section 119? Shall this section, as amended, carry? All those in favour? Opposed? This section carries.

Sections 120 and 121: No amendments are proposed. Are there questions or comments to either of those sections? Seeing none, shall sections 120 and 121 carry? All those in favour? Opposed? Both of those sections carry.

Section 121.1: We have a Liberal amendment proposed. Since we have no one here from the Liberal Party, we will move on.

Sections 122, 123, 124 and 125: There are no amendments proposed to those four sections. Any questions or comments? Seeing none, shall sections 122, 123, 124 and 125 carry? All those in favour? Opposed? Those four sections carry.

Section 126: We have a government amendment proposed on page 115.

Mrs Johns: I move that section 126 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

"Exception

"(2) Despite clause (1)(a), a transfer order may include provisions relating to the following matters:

"1. The disability benefits and life insurance described in subsection 92(7) and the amount referred to in subsection 92(8).

"2. Any liability or obligation associated with a proceeding or potential proceeding relating to the Ontario Hydro pension and insurance plan and the pension and insurance fund of Ontario Hydro or relating to the Ontario Hydro Financial Corporation pension plan and the pension fund for it."

Mr John R. Baird (Nepean): Just to clarify, the cabinet may not make transfer orders which affect the assets or liabilities of the pension plan without the prior approval of the superintendent of financial services.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment carries.

Further comments to section 126? Shall 126, as amended, carry? All those in favour? Opposed? That section carries.

We have a new section proposed by the government, 126.1.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Pension subsidiary of Financial Corporation

"126.1(1) The Lieutenant Governor in Council may make orders transferring officers, employees, assets, liabilities, rights and obligations of the subsidiary of the Financial Corporation established under section 102.1 to the Generation Corporation, the Services Corporation, the IMO, the board, the Electrical Safety Authority or any other person.

"Application of this part

"(2) This part, except section 126, applies with necessary modifications to an order made under subsection (1) and, for that purpose,

"(a) a reference in this part to a transfer order shall be deemed to be a reference to an order made under subsection (1); and

"(b) a reference in this part to Ontario Hydro shall be deemed to be a reference to the subsidiary of the Financial Corporation established under section 102.1."

Mr Baird: This again deals with transfer orders. It allows for a transfer from a pension subsidiary to one or more of the successor employers, being Genco, Servco, Finco etc.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

There are no amendments proposed for section 127. Any questions or comments? Shall section 127 carry? All those in favour? Opposed? Section 127 carries.

An amendment is proposed for section 128, a government amendment.

Mrs Johns: I move that subsection 128(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following clause:

"(a.1) prescribing persons for the purpose of paragraph 8 of subsection 113.1(2);"

This is talking about the land registry that we have put a number of amendments in. We're talking about who can receive title to the Ontario Hydro land assets, and we're narrowing that down as a result of paragraph 8 in section 113.

The Chair: Further discussion on this? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 128, as amended, carry? All those in favour? Opposed? This section carries.

No amendments are proposed to section 129. Any discussion? Shall section 129 carry? All those in favour? Opposed? It carries.

Section 130: We have a government amendment on page 118.

Mrs Johns: I move that subsection 130(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Municipalities may incorporate electricity businesses

"(0.1) One or more municipal corporations may cause a corporation to be incorporated under the Business Corporations Act for the purpose of generating, transmitting, distributing or retailing electricity.

"Conversion of existing electricity businesses

"(1) Not later than the second anniversary of the day this section comes into force, every municipal corporation that generates, transmits, distributes or retails electricity, directly or indirectly, shall cause a corporation to be incorporated under subsection (0.1) for the purpose of carrying on those activities."

We heard a lot about this section when we were out travelling. We heard from AMO, the Municipal Electric Association and the utilities themselves that they didn't feel there was a level playing field and that they should be able to enter into different businesses that they might not be in presently. So we've set that up in subsection (0.1). What we've also said, in the second one, is that they have to become an Ontario business corporation.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

We have an NDP motion, page 119.

Mr Wayne Lessard (Windsor-Riverside): I move that subsection 130(1) of the Electricity Act, 1998, as set out in schedule A of the bill, be struck out and the following substituted:

"New corporations may be established

"(1) A municipal corporation that generates, transmits, distributes or retails electricity, directly or indirectly, may cause a corporation to be incorporated under the Business Corporations Act for the purpose of carrying on those activities."

Once again, this follows from the comments we received from the utilities and from the Municipal Electric Association with respect to the requirement that they must incorporate a corporation under the Business Corporations Act and that it be done within two years. This gives them the flexibility to establish themselves as a corporation or not and removes that requirement that they do so within two years. It provides greater flexibility for the utilities.

Mrs Johns: One of the fundamental policy decisions that was made in the white paper was that these municipal electric utilities and the monopolistic businesses we have now were going to become Ontario business corporations so there would be accountability to the shareholders, so that we would see audited financial statements, so that there would be a number of requirements that the Ontario Business Corporations Act puts on a corporation that we felt were excellent accountability measures. We feel very strongly that all of these corporations should come under the Ontario Business Corporations Act. It's fundamental to our restructuring and adding competition to this sector.

The Chair: Further discussion? Shall this amendment carry? All those in favour? Opposed? This amendment is lost.

Another NDP amendment on page 120.

Mr Lessard: I move that section 130 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following subsection:

"Share ownership

"(6) No person other than a municipal corporation shall hold or acquire the voting securities of a corporation incorporated pursuant to this section."

This amendment is being proposed to prevent the privatization of municipal electric utilities that we think can take place pursuant to Bill 35. We feel that municipalities may, as a result of the responsibilities that have been imposed on them through downloading, find themselves in desperate financial situations and be forced to look to their utilities as a lucrative source of cash and want to unload them. We don't want to see the sale of assets at firesale prices. We don't want to see that with Ontario Hydro's former assets, and we don't want to see municipal utilities selling their assets at firesale prices as well. This states that the municipality is the only person who can acquire securities in the corporations that are established to generate and distribute or retail electricity within municipalities.

0920

Mrs Johns: This of course is fundamental, again, to the white paper. We believe that both Ontario Hydro and the municipal electric utilities should have the ability to be able to run a business in a much better way than they have in the past. To do that, they may have to look at different ways of raising funds, of doing things. I fundamentally disagree with Mr Lessard on this issue. He's basically saying that the people who are elected at the local level are not capable of making the decisions they were elected to make, that they're not capable of making decisions to get the best dollar for their product, so they're going to firesale them. I just disagree with that.

The other thing I want to make very clear is that an equitable transfer happened in this province. Dollars moved up and down, and services moved up and down, so that we had one representative as opposed to all three levels of government working on specific issues. There was an equitable transfer of funds and services that went with the Municipal Act.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Further discussion on this section? Shall section 130, as amended, carry? All those in favour? Opposed? This section carries.

There are no amendments proposed to section 131. Any discussion on this section? Seeing none, shall section 131 carry? All those in favour? Opposed? This section carries.

Section 132: We have an NDP amendment to this section. Actually, I stand corrected. This is not an amendment; it's in fact a piece of information. Shall section 132, then, carry? All those in favour? Opposed? Section 132 carries.

Section 133: We have an amendment proposed by the government.

Mrs Johns: I move that section 133 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

"Debentures

"(1.1) Despite subsection (1), a transfer bylaw may not transfer any liabilities, rights or obligations arising under a debenture issued or authorized to be issued by a municipal corporation."

In this section, we were trying to ensure that municipal debentures could not be transferred. We felt that people, when they were buying debentures at the municipal level, were depending on the municipal corporation as a guarantee, so they could not be transferred.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion on 133? Shall this section, as amended, carry? All those in favour? Opposed? This section carries.

Section 134: No amendments. Any discussion? Shall this section carry? All those in favour? Opposed? Section 134 carries.

Section 135: We have an NDP amendment on page 123.

Mr Lessard: I move that section 135 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following subsection:

"Collective agreements, etc.

"(2.1) The transferee is bound by any collective agreements, employment contracts and other arrangements conferring rights on employees as if the transferee had been a party to those agreements, contracts and arrangements."

The purpose of this amendment is to ensure that all employee rights, not just those that are included in collective agreements, must be upheld when there is a transfer. I think that may have come as a suggestion from the Canadian Union of Public Employees. I just can't recall where that came from, but the reason for it is that there may be other rights that employees enjoy that may not be included in collective agreements, and the purpose of this section is to cover off those rights as well.

Mrs Johns: I don't remember having been asked for this, but it's my understanding that this bill doesn't refer to successor rights, which means that the existing successor rights provisions under the Labour Relations Act will continue to apply. Can I get some legal opinion on that?

Ms Brandon: That is covered.

Mrs Johns: So in effect this amendment is covered by what we already have.

Ms Brandon: Yes. The only thing I'm not clear on is this reference to what these other rights may be and where they'd be coming from. If it was something that wasn't being covered by the collective agreement and the successor rights, it could be dealt with in a transfer bylaw if we knew what these things were.

Mrs Johns: Did you have any idea what you were talking about when you were saying "other rights?"

Mr Lessard: I was just citing an example. Maybe you can tell me what other sorts of rights may be covered other than what's in a collective agreement under the Labour Relations Act.

Ms Brandon: I'm sorry, I can't help you out on that. I don't know.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Further discussion on section 135? Shall section 135 carry? All those in favour? Opposed? This section carries.

Section 136, we have a government amendment proposed.

Mrs Johns: I move that section 136 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsections:

"Use of amount transferred

"(2) Any amount transferred under subsection (1) shall be used by the transferee only to pay for capital costs in respect of electrical power services for which the amount transferred was collected.

"Effect on municipal bylaw

"(3) A municipal bylaw that relates to development charges in respect of which an amount is transferred under subsection (1) ceases to apply in respect of electrical power services on the date of the transfer but otherwise continues to have effect, with necessary modifications."

The Chair: Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Shall section 136, as amended, carry? All those in favour? Opposed? Section 136 carries.

No amendments are proposed to sections 137 or 138. Shall sections 137 and 138 carry? All those in favour? Opposed? Both sections carry.

Section 138.1 is a new section proposed by the government.

Mrs Johns: I move that the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following section:

"Statements in registered documents

"138.1(1) A statement, in a registered document to which a corporation incorporated under the Business Corporations Act pursuant to section 130 is a party, that land described in the document was transferred to the corporation, by or pursuant to a transfer bylaw, from a municipal corporation or from a commission or other body through which a municipal corporation generated, transmitted, distributed or retailed electricity, and any other statement in the document relating to the transfer bylaw, shall be deemed to be conclusive evidence of the facts stated.

"No new interest

"(2) Subsection (1) does not give any person an interest in land that the municipal corporation or the commission or other body did not have.

"References to unregistered transfer by-laws

"(3) A document that is otherwise capable of being registered or deposited under the Registry Act or registered under the Land Titles Act and that refers to an unregistered transfer bylaw may be registered or deposited under the Registry Act or registered under the Land Titles Act despite any provision of those acts.

"Definitions

"(4) In this section,

"land" means land, tenements, hereditaments and appurtenances, or any estate or interest therein; ('bien-fonds')

"registered document" means a document registered or deposited under the Registry Act or registered under the Land Titles Act. ('document enregistré')

This is a mirror amendment to the Ontario Hydro ones for the municipal electric utility.

0930

Mr Lessard: As we have the lawyers here, maybe they could explain to us what a hereditament is.

Ms Brandon: It's property that's capable of being inherited. Beyond that, I honestly don't really know a whole lot about it.

The Chair: Further discussion? Shall this amendment, section 138.1, carry? All those in favour? Opposed? This section carries.

Section 139: No amendments are proposed. Any questions or comments? Shall this section carry? All those in favour? Opposed? Section 139 carries.

Section 140: A government amendment found on page 126.

Mrs Johns: I move that section 140 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by adding the following subsection:

"Release of transferor

"(2) Subject to subsection (1), the transfer of a liability or obligation under this part releases the transferor from the liability or obligation."

This again mirrors the Ontario Hydro amendment that we put through and this is for the municipal electric utility.

The Chair: Shall this amendment carry? All those in favour? Opposed? This amendment carries.

We have an NDP amendment to this section.

Mr Lessard: I move that section 140 of the Electricity Act, 1998, as set out in schedule A of the bill, be amended by adding the following subsection:

"Exception

"(2) Subsection (1) does not apply to collective agreements, employment contracts and other arrangements conferring rights on employees."

What this subsection seeks to do is ensure that once a transfer takes place, employees are not bounced back and forth between the former employer and the new employer in seeking to enforce any rights they may have, or had in the past.

Mrs Johns: I was actually trying to ascertain what Mr Lessard was talking about. I'd like to hear from the legal department, if I could, if his concerns are covered in Bill 35.

Ms Brandon: The transfer bylaw can provide that the obligations shall be enforced against the new employer. Subsection 140(2), which we just added, would legislatively provide that the municipality no longer has any responsibility for that. So it would only be to the new employer that the person could look, and should look.

Mrs Johns: So there's no way that an employee could get bounced back and forth. They would go from the municipal electric utility to the new corporation once the transfer order was done?

Ms Brandon: That's right. I assume you're talking in terms of enforcing their rights that they don't get bounced back and forth, not that they don't get bounced —

Mr Lessard: That's right.

Ms Brandon: If the transfer bylaw provides that their rights and obligations under the agreement should be enforced against the successor employer, which a transfer bylaw can provide, then 140(2), which was just added, says that the transferor, the municipality, has no further liability or obligation to that. So they wouldn't have any basis to tell the employee, "Go back to the municipal corporation," because the municipal corporation was completely released.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Further discussion on section 140? Shall section 140, as amended, carry? All those in favour? Opposed? This section carries.

Section 141: A government amendment is proposed.

Mrs Johns: I move that section 141 of the Electricity Act, 1998, as set out in schedule A to the bill, be amended by striking out "deemed to have been commenced" in the sixth and seventh lines and substituting "continued."

This mirrors what we did in the Ontario Hydro section.

The Chair: Further discussion? Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Further discussion on section 141? Shall this section, as amended, carry? All those in favour? Opposed. This section, as amended, carries.

Section 142: There are no amendments proposed. Any discussion? Shall section 142 carry? All those in favour? Opposed? Section 142 carries.

Section 143: A government amendment is proposed.

Mrs Johns: I move that subsection 143(1) of the Electricity Act, 1998, as set out in schedule A to the bill, be struck out and the following substituted:

"Certain rights not affected by transfer

"(1) A transfer by or pursuant to a transfer bylaw,

"(a) shall be deemed not to constitute,

"(i) a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance,

"(ii) a breach of any act, regulation or municipal bylaw, or

"(iii) an event of default or force majeure;

"(b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

"(c) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

"(d) shall be deemed not to give rise to any estoppel."

This mirrors again what we did for Ontario Hydro in a previous section.

The Chair: Further discussion on this amendment? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion on section 143? Shall section 143, as amended, carry? All those in favour? Opposed? This section carries.

No amendments are proposed to sections 144, 145 or 146. Any discussion on these three sections? Shall sections 144, 145 and 146 carry? All those in favour? Opposed? These three sections carry.

Section 147, an NDP amendment.

Mr Lessard: I move that subsection 147(1) of the Electricity Act, 1998, as set out in Schedule A of the bill, be amended by striking out clause (b).

What this does is eliminate the ability of the Lieutenant Governor in Council to make regulations that may exempt contracts from successor rights.

Mrs Johns: I would like to hear the legal opinion on that. It's my understanding that by taking out clause (b) what in effect is happening is that contracts are not breached if they're transferred. It is conceivable that some contracts such as financing or debt contracts should not be transferred and you're stopping that from happening. I just want to hear the legal opinion on your motion.

Ms Brandon: I agree with what Mrs Johns has just stated. Section 143 itself actually mirrors a provision that was put into the Ontario Hydro provisions. There were contracts there, and again it had to do with some debt-financing matters, that the government in developing this stuff thought that maybe when they are transferred it should be treated as a breach of the contract so that the parties have to go back and renegotiate. That was why we put in a provision to carve out some of these contracts from what we're calling the curative provisions. So the effect of excluding some of these contracts from the application of clause 147(1)(b) would mean that they are terminated or could be deemed to be terminated.

The Chair: Further discussion? Seeing none, shall this amendment carry? All in favour? Opposed? The amendment is lost.

Further discussion on section 147? Shall this section carry? All those in favour? Opposed? This section carries.

Section 148:

Mrs Johns: That's just an information piece from the government and we're going to be voting for this section.

The Chair: Then no amendments are proposed. Any further discussion on section 148? Shall section 148 carry? All those in favour? Opposed? The section carries.

Sections 149 and 150 have no amendments proposed. Are there any questions or comments on these two

sections? Shall sections 149 and 150 carry? All those in favour? Opposed? Both these sections carry.

We're about to move into Schedule B, so I ask, shall Schedule A, as amended, carry? All those in favour? Opposed? Schedule A carries.

Now moving into Schedule B, the first amendment proposed is a Liberal amendment and since we have no Liberal member present that is out of order.

The NDP motion, then, on page 133.

0940

Mr Lessard: I move that section 1 of the Ontario Energy Board Act, 1998, as set out in Schedule B of the bill, be amended by striking out paragraph 6 and substituting the following:

"6. To actively promote energy efficiency and the use of cleaner, more environmentally benign energy sources.

"7. To reduce electricity bills for all consumers."

What this does is change the wording in the existing section to read that instead of "facilitate," the Ontario Energy Board is mandated "to actively promote energy efficiency," and it also removes the phrase, "in a manner consistent with the policies of the government of Ontario."

Just to echo our concerns about what that means, I think the wording, "in a manner consistent with the policies of the government of Ontario," is redundant and actually restricts the mandate of the Ontario Energy Board because, as we know, the environmental policies of this government have been very seriously criticized by the Environmental Commissioner in her last two reports and I don't even know why the government would want to have the words "in a manner consistent with the policies of the government of Ontario" in there just to attract a flag to that record.

Number 7, "To reduce electricity bills for all consumers," is something that's been the subject of much debate during our clause-by-clause hearing because the title of the bill states that this is not only, "An Act to create jobs and protect consumers," but to do it "by promoting low-cost energy," and nowhere in the purpose or objects of the bill is that set out. We've argued to have that put in, but that has been consistently defeated by government members. This is another opportunity to ensure that what is in the title of the bill is actually reflected in the bill, the intention being that there be low-cost energy as a result of Bill 35.

This gives the Ontario Energy Board the mandate to ensure that there is low-cost energy for all consumers in the province. I think it's essential that this be one of the responsibilities of the Ontario Energy Board. The minister has been consistent in his remarks in the Legislature and outside that the purpose of the bill and his intention is that it result in lower-cost energy for all consumers, and this ensures that the Ontario Energy Board has that goal as part of its mandate.

Mr Doug Galt (Northumberland): Just a couple of quick comments. Essentially this was debated about four days ago under a different heading of this bill, going into a different act. The member opposite makes reference to item 6 in the changes, dropping, "in a manner consistent

with the policies of the government of Ontario." Under a general heading of "Objectives," it seems logical to me to put in a statement. It could be a party of a different colour in government and I would think they would want to have a similar reflection that it would look to the policies of the government of the day as to how it would function.

I think we've been into quite a bit of debate on item 7 that he is making reference to, "To reduce electricity bills for all consumers." Certainly he knows what happens when you put a ceiling or a floor on any price. It artificially distorts the reality of competition. The experience throughout the world, when competition has been brought in for electricity, is that prices have either held their own or gone down. In some areas they've gone down very significantly. To put a ceiling on the price would be unrealistic. I know this isn't a specific ceiling, but it's certainly suggesting and enabling the opportunity to put a ceiling on, and our government is not supportive of putting ceilings on the price of anything.

Mr Lessard: Once again, this isn't putting a ceiling on the price of energy at all. We have an Ontario Energy Board, which has a mandate that includes protection of the interests of consumers of energy. In that mandate there are a number of functions that they've been mandated to undertake: "to facilitate competition...to provide...non-discriminatory access...to protect the interests of consumers...to promote" energy "efficiency...." A number of things are put in there as part of their mandate to ensure that the Ontario Energy Board deals with that responsibility they have to the public in a manner that's in their best interests.

We've given the energy board that watchdog mandate for a reason; that is, so they do have some independence from the government in looking after the interests of consumers. If the government says that the energy board, in undertaking that mandate, shouldn't be looking out for their best interests to make sure they have lower-priced energy, then I guess that really sends a signal to the energy board and to consumers that they'd better not be looking forward to lower rates, because the Ontario Energy Board certainly isn't going to be looking to promote that, and the government in defeating the amendments to the Electricity Act as well with respect to promoting low-cost energy really doesn't support that principle either. It's no surprise that they don't want the energy board to be struck with that mandate either. I think that really sends the signal to consumers in Ontario that you'd better be prepared for higher electricity rates as a result of Bill 35.

Mr Sean G. Conway (Renfrew North): I have a question for Les and the staff. Can you tell me whether there is another jurisdiction in the developed world that is or has recently moved to deregulation of the electricity marketplace which has, like Ontario, the preponderance of nuclear power that we have here, representing roughly 60% of our generation base at the point of transition? Is there another jurisdiction?

Dr Galt makes the point that there are few places where there's been a move to deregulation where prices have not come down. I'm trying to find a jurisdiction in the devel-

oped world that has moved or is moving to deregulation, moving to a competitive marketplace, that is like Ontario in that roughly 60% to 65% of generation at the time of transition is nuclear. I raise that because the experience in most jurisdictions is that one of the really complicating problems around rates in the transitional period is stranding, particularly associated with nuclear assets. Have we got another jurisdiction that has Ontario-like nuclear capacity?

Mr Les Horswill: Not precisely.

Mr Conway: What would the closest be?

Mr Horswill: Sweden has a very substantial nuclear program and deregulated and enjoyed substantial price reductions immediately thereafter and didn't have much stranded debt. I can't recall —

Mr Conway: That's a helpful answer. If I want to do some research I should look at the Swedish example. That might be the best one, in your view.

Mr Horswill: I think so.

Interjection.

Mr Conway: I've got my answer. I don't want to take any more time.

0950

Mr Galt: I just have to respond to the member of the third party and some of his comments that the government doesn't care. I think if he looks under part I, section 1, "General," every one of those six points makes reference to prices. Let me reiterate the content, just so he's clear. Number 1 talks about "facilitating competition in the generation and sale"; item 2 talks about "non-discriminatory access to transmission", which is about competition; item 3 talks about "to protect the interests of consumers with respect to prices"; item 4, "to promote economic efficiency"; item 5 talks about "to facilitate the maintenance of a financially viable electricity industry"; item 6 talks about "to facilitate energy efficiency."

I don't know how many more times you can say this. I suppose we can put it in 99 times, but I would think how it's being said here is just fine and the addition that they're suggesting really doesn't add anything to the general overview of this bill. I think it's said very well. I just wanted to point out to him that the government is indeed very concerned and his comments really do not fit at all with what the government has put into this bill.

Mr Lessard: Let me ask Dr Galt why the words "promotion of low-cost energy" appear in the title of the bill but nowhere else.

Mr Galt: How much duplication would you like?

Mr Lessard: So it's excessive wording, right? We want to try and reduce the number of words we put in bills, so we only have these good intentions in the title but we don't want to include them anywhere else as objects of the bill or responsibilities of the Ontario Energy Board. It's all well and good to list all of those things in there as the responsibilities of the board, but to have something that says something far different in the title of the bill, that says promote low-cost energy, that's what the minister touts as part of the objectives of this bill. I think it's misleading to have it in the title of the bill and not to have it in

the objects of the bill or in the mandate of the Ontario Energy Board.

You can say all you like about all the words that are in there. I would say that 1 to 6 are probably redundant. It should just say that what the Ontario Energy Board should be doing is promoting low-cost energy for all consumers through competition. That would eliminate a whole lot of words and coincide with the title of the bill and what the minister is trying to sell to electricity consumers here in the province.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Further discussion to section 1 of schedule B? Shall this section carry? All those in favour? Opposed? This section carries.

Schedule B, section 2: We have an NDP amendment on page 134.

Mr Lessard: I move that section 2 of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by striking out paragraph 5 and substituting the following:

"5. To actively promote opportunities for energy efficiency."

What that amendment seeks to do is to give the Ontario Energy Board a mandate with respect to its dealings with gas regulation, the mandate to promote opportunities for energy efficiency. It once again removes those words "consistent with the policies of the Ontario government." If Dr Galt is concerned that maybe there are too many words in this bill, this is an opportunity to meet his desire to remove some of them. There are some excessive words here that we can eliminate. I would hope that he would support this amendment on that basis.

Mr Galt: We just want to be consistent.

The Chair: Seeing no further discussion, I put the question. Shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Further discussion to section 2? Shall section 2 carry? All those in favour? Opposed? This section carries.

Sections 3 to 21, inclusive, have no amendments proposed. Any discussion on those sections?

Mr Conway: Yes, I have a question for Les. What is the current commitment of the government to provide additional resources to the energy board to carry out the not inconsiderable functions that are being visited upon that august regulator? I should add, new responsibilities. Can you just give the committee some sense of where we were prior to Bill 35 in terms of full-time-equivalent staff and where you expect to be at or about day one of the brave new world?

Mr Horswill: I think the base has hovered around 45 to 50 employees. Management Board has released resources for the board to presently expand by 19 positions and we expect that the OEB will be coming forward with another submission later in the fall after they've looked more carefully at the structure of the board. The initial release of resources provides them ample resources to acquire responsibly new staff this fall and to spend

adequate consulting dollars to assist in the interim licence development and the initial tariffs.

The initial transfers basically constitute the equivalent resources Ontario Hydro had been spending on distribution regulation. It is assumed that over time the resources of the OEB will have to be increased in addition to the 19 new positions by some equivalent thereof if the case is agreed to by Management Board.

Mr Conway: So the full-time equivalent was about 45 to 50 before the brave new world and that's expected to increase by about 30% for day one of competition.

Ms Anne Powell: The 19 relate to the balance of this fiscal period, so that would take us to April 1, 1999. Then again we will be looking at more permanent resources that will be required in the next fiscal period, from 1999 to 2000. By the time competition opens up, that number will be larger than the incremental 19 positions.

Mr Conway: What is your expectation then? What does "significant" mean relative to the 45 or 50 that had been there through, say, the 1990s?

Ms Powell: There hasn't been an approved plan done but there have been estimates that the number would double. But those have not been approved numbers and we did not go forward with those because we needed to think out the process in more detail.

Mr Conway: I don't wonder.

The Chair: Further questions or comments to those sections? Shall sections 3 to and including 21 carry? All those in favour? Opposed? Those sections carry.

Section 21.1: A new government amendment, please.

Mrs Johns: I move that the Ontario Energy Board Act, 1998, as set out in schedule B to the bill, be amended by adding the following section:

"Hearings under Consolidated Hearings Act

"21.1(1) Despite subsection 4(4) of the Consolidated Hearings Act, the establishing authority under that act may appoint one or more members of the board to be members of a joint board holding a hearing under that act with respect to an undertaking for which, but for the application of the Consolidated Hearings Act, a hearing before the board is or may be required.

"Where term of member ends

"(2) If a joint board commences to hold a hearing under the Consolidated Hearings Act and the term of office on the Ontario Energy Board of a member sitting for the joint hearing expires or is terminated before the proceeding is disposed of, the member shall remain a member of the joint board for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated."

What we're trying to do here is ensure that members of the board can sit on another board that would fall under the Consolidated Hearings Act, and also that if a member's term is finished, if they're in the middle of a hearing, they can finish that hearing.

1000

The Chair: Further discussion? Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Moving now to schedule B, no amendments are proposed to sections 22, 23 or 24. Shall these three sections carry? All those in favour? Opposed? Sections 22, 23 and 24 carry.

Section 25, we have an NDP amendment found on page 136.

Mr Lessard: I move that subsection 25(6) of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by adding the following clauses:

"(e.1) providing for intervenor funding, in the prescribed circumstances, for parties making presentations before the board;

"(e.2) prescribing circumstances for the purpose of clause (e.1)."

The purpose of this amendment is to provide opportunities for intervenor funding for proponents before the Ontario Energy Board hearings. This is being placed in here because the current government, in its wisdom, eliminated intervenor funding, and this gives people who want to protect the public interest and the environment an opportunity to seek intervenor funding so that they can make representations before the board.

Mr Conway: A question in this connection for Les again. As it currently stands, how does the department imagine Ma and Pa Kettle having any kind of sensible and affordable involvement with any number of proceedings at the board that may touch on vital interests of their consuming situation? There was some talk about this in the hearings, if you recall. The Consumers' Association, I think Mr Laughren and a couple of others made the point that this is a new kind of regulation. It's going to be significant and meaningful. It's an extremely complicated business. One's natural worry is that you're going to have to be a high-powered lobby, a big-time law firm or some kind of very special interest to afford any kind of involvement on hearings that may in fact be very material to your own situation. What's the latest expectation of how that process is going to work and how the average consumer might interact with that?

Mr Horswill: The board is determined, with the new statute, as in the past, to enjoy the benefit of third-party evidence to help them make public-interest decisions as prescribed by the act. It is anticipated that the flexibility provided to the regulator to use public hearings, to use written hearings, to use flexible devices will not inhibit but in fact could broaden ease of access on a cost-effective basis to the board in making decisions. Certainly the act recognizes and the board recognizes that where substantial third-party interests are involved, there has to be access to third parties to comment in advance of the decision, particularly with regard to tariffs. Of course in the interim period, as we've discussed, the minister will take responsibility, as well as the board, on the interim provision of licences and tariffs.

I'd like to turn the question on funding over to our solicitor to assist.

Mr Conway: Before you do that, though, if one sits in on a National Energy Board hearing or the CRTC, particularly as a private citizen, one quickly understands that

this is purely a game for corporate interests. You just cannot imagine participating in most of those exercises if you're not part of some corporate arrangement. I'm thinking of federal operations, which I've just happened to observe on occasion, and I just can't imagine citizens wandering in there, trying to interact with that process and doing so on the basis of his or her own resources or his or her own knowledge base. I'm trying to imagine how this scheme is going to work.

Ms Powell: You're quite right that the federal system with the National Energy Board is a very corporately run system, run by lawyers. The Ontario Energy Board, because it deals with end-use consumers and a number of landowner issues in the construction of facilities, has traditionally operated in a different mode and has made their hearings more accessible to individuals off the street. For instance, there's a notice of hearing that goes out in the newspapers and is required to be published. They invite people to participate through providing letters or as an intervenor. If they elect to take the intervenor route, they are provided assistance by the board's solicitor in making their presentation before the board, or if they want to participate in a way of drawing evidence, they're assisted in doing that, and they would be eligible for cost awards which the board presents. Those are done after the fact.

Mr Conway: I know something about how the energy board has worked in the past and I think you've described it quite precisely, but in many ways that's almost irrelevant. That's not fair; it's not irrelevant, but this is a totally new world. I can imagine Ma and Pa Kettle going to the energy board tomorrow and finding out that it's a hell of a lot different than yesterday, because what this board is going to now regulate is a very different breed of cat than they've been regulating in the past.

I would expect very quickly the energy board hearings to take on some, if not all, of the disagreeable character of those federal bodies to which I made reference, simply because the interests now are going to be much, much more significant and the players are going to be more numerous and more powerful. I can imagine situations where you're going to go to hearings and find yourself in a room with — I've been to a number of those hearings and I know how they've worked, but I'll tell you, the new ones are going to have a whole host of new players, many of them very significant, well-resourced, aggressive players who are used to this game in other jurisdictions.

I'm just trying to imagine the ladies' aid coming in from wherever to make a pitch and finding out that they're there with Enron and Duke Power and the Acme Energy Services Corp who have this thing much more thoroughly cased than the poor ladies' aid will ever figure out.

Ms Powell: I quite agree with you that the mandate of the board will be different as we move into that future, and the players will be different and to an extent more sophisticated. There will be more sophisticated players there; however, I think reform is being introduced for administrative tribunals which you're probably aware of, the agency reform, where government is working with the

agencies to try to assure that the people off the street can participate. I think the board will continue to move in that direction. It's not easy, but they will try to do it.

The issue we're discussing here is intervenor funding. Whether that would provide a better participation is —

Mr Conway: I have some very real concerns with intervenor funding, but I understand the point of Mr Lessard's amendment. Enron won't need intervenor funding, trust me, and if governments continue to pursue partial or full cost recovery for these oversight functions or these regulatory functions, and that certainly seems to be the general direction of policy, both locally and nationally, then I'm not so sure that I wouldn't say to the ladies' aid: "Don't waste your time at the energy board. Get to the street."

Mr Horswill: Could I just add, if I may, that the new world for the Ontario Energy Board is to a large extent about its powers, not its constituency. The Enrons and the Pollution Probes and the Northwatches have been before the Ontario Energy Board on numerous occasions in the last 25 years talking about electricity policy and talking about electricity rates. The difference now is that the board will be in a position to make decisions and not simply advise.

1010

Mr Conway: But again I come back to a point that the consumers' association made, and I thought they made it very well. There are such enormous and powerful commercial interests at play in this. This always sort of reminds me of the parliamentarians in the British system, who pray for the free vote. They want the free vote because they want the independence that brings them. What they don't understand is that it exposes them to all of the pressures of lobbying that you see in the congressional system — easily assaulted and picked off one by one.

The parallel here, it seems to me, is that we've now got a situation where, as the consumers' association pointed out in their presentation: "Electricity is to residential consumers an essential commodity. They cannot live without it.... Individually, residential consumers have virtually no economic bargaining power. That is in stark contrast to the major industrial consumers of electricity and the entities who would supply electricity in the restructured market." The point that the consumers' association rightly made is that individual consumers are going to find themselves in now with very focused, very powerful corporate interests at all levels, and I've got to believe that's going to include the regulatory stream.

We're pure in Ontario and none of this happens here, but if I look at the American experience, at the lobbying they're forced to report there around just the structure of their legislation, I see behaviour that is precisely what I would expect, just sharks everywhere. I have no reason to believe that those sharks are going to just assiduously avoid the regulatory world, where key decisions are going to be made. Because there are going to be so many things that are so bloody complex, there's a delicious kind of irony about this exercise we're engaged in now. I have no idea how many significant things are in the stream that's

passing under our feet here every day, and I don't think anybody in the committee does. I just look at 175 or 200 government amendments, which are the first cut of changes and refinements and whatever. Again, as many have commented, this is enabling legislation, so the devil will be in the details, and most of the details are yet to be written.

I come back to where a lot of these decisions are going to be made. Mr Lessard's amendment would strike a lot of average citizens as being relatively sensible. I know that in some ways it isn't, because, as I said earlier, I have some very real concerns about intervenor funding and the kind of industry that it produced, particularly around Hydro hearings in an earlier time. Having said that, you'd have to be a dolt of the first order to imagine that you're going to have a situation before a regulatory panel where it's Ma and Pa Kettle versus Duke Power, or Ma and Pa Kettle versus Baton Broadcasting. It's an unfair fight. One group is going to be heavily resourced, highly focused, and the others are going to be pretty well on their own. You're telling me that the culture we've seen at the energy board, which is user-friendly, kind of informal, will continue and solve most of those problems. Is that basically what you're telling me?

Ms Powell: I think so, and I believe that Mr Laughren has committed to that too, that he wants to make the board's services more accessible.

Mr Conway: What Mr Laughren wants to do and what he will be able to do once this process begins — again, if I look particularly to the United States and Great Britain, the complexity of the task here is very significant. This is not easy business, as just the reading of these amendments ought to make plain.

Anyway, enough said. I have some real concerns here about how this is actually going to work for the regular citizen.

Mr Lessard: What this is attempting to address, and what the opportunities that people have to access intervenor funding have been set up to address in the past, is really the inequity in bargaining power between competing forces who may be attending at hearings. As Mr Conway has said, there's going to be one group that's going to be well financed, well prepared and have unlimited resources to do research and make presentations, and then we have consumers, who are only trying to see lower prices for energy, as has been promised in this bill, but may find that they're not getting that and want to try to make presentations to the board to protect that interest they have to ensure that they do get lower prices.

We know the legislation includes the promotion of lower-cost energy in the title, but it's not one of the objectives of the bill, it's not one of the objectives of the mandate for the Ontario Energy Board. So it's only going to be left to consumers to look out for their own interests, and they're going to be looking out for their own interests in a system that is going to be a market-based one, not one that is focused on the public interest but is going to be focused on the interests of large corporate players and their shareholders. I have a very real concern about who is going to be the winner in a fight like that.

I have high regard for Mr Laughren's intentions to ensure that consumers have easy access to make presentations before the board. However, what his intentions are and what he's able to do are two different things, and he's not going to be there forever, I presume. This is legislation that's going to have an incredible impact well into the future, and there needs to be some mechanism to ensure that small consumers can adequately defend themselves at the Ontario Energy Board level and that they have some financial resources available to them to be able to do that.

Mrs Johns: I just wanted to draw to your attention that I heard from the ministry that the board could award costs. We have to be aware that we have had some experiences with intervenor funding in the past that have not worked well. But this approach of the board awarding costs has worked fairly well in the short term that we've been using it, and I see no reason to move away from that unless we have some specific examples where we find that it's not working, and then we should look at our policy of that again.

Mr Conway: I think the member makes a good point. The only other thing I want to cite is a point I made some days ago. I was talking about the Union Gas fandango of 10 years ago. I'm telling you, I can just imagine — I don't care if you're Solomon herself and you're chair of that energy board — if you get one, God forbid that you should get two Union Gas activities the likes of which we saw in the mid-1980s, you're going to need 900 people to figure out who's on first and what's on second. I can guarantee you, at the end of the day, your best hope will be that three years after it's all over you might figure out what was going on.

I just make the point. I think Mrs Johns's last intervention was a good one. But I am under no illusions about this new world order. These are going to be shark-infested waters. It's not all going to be bad, but you won't need very many bad cases to really tie up the regulator and many of the resources. We'll just have to see what we see, but I cite again the Union Gas case of the mid-1980s. I would not want to be Mr Laughren trying to figure out what was going on under my feet. As I say, the OEB had at least one reference and I think there were one or two separate Ministry of Energy reviews, and I don't know that they ever figured it out.

1020

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Another NDP amendment.

Mr Lessard: I move that section 25 of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by adding the following subsection:

"Guiding principle

"(8) In exercising their powers under this section, the board and the Lieutenant Governor in Council shall ensure that members of the public are not prevented from bringing issues of public importance before the board."

That prevents the awarding of costs against an intervenor specifically to discourage that intervenor by imposing a financial penalty against them.

Mrs Johns: I know one of the members up here from the ministry used to be on the Ontario Energy Board, and I'm just wondering if we could hear from Anne. Is it often the case that an intervenor is awarded costs, as Mr Lessard is concerned about, and why would that happen?

Ms Powell: Intervenors are awarded costs at almost every Ontario Energy Board hearing. You remember that when the Consumers' Association of Canada came before the committee and spoke, they made a proposal, and I believe it's in a future Liberal motion that will be discussed later. The Consumers' Association of Canada, as far as I know, has never expressed concerns with the cost-award system of the board. It provides adequate cost coverage for them, and they have been quite satisfied by it. That section is in the current act and is identical in this proposed act.

Mrs Johns: I think I misstated my question. I thought I heard Mr Lessard say that there was some penalty if they brought forward a frivolous suit.

Ms Powell: That's quite correct. In the case of intervenor funding, the funding is up front. That amount is given and is not audited. In the case of the cost-award system, following the hearing, the board makes cost awards to parties based on the contribution they have made in the hearing to the decision. In cases where there is evidence brought before the board which has delayed hearings, has not focused on the issues that have been decided prior to the hearing commencing, the board has denied costs in those cases as it sees that the evidence is not relevant to the issues that were set out before the hearing commenced.

Mrs Johns: What I'm hearing you say is that there isn't really a penalty; they just don't get their costs or they have to return the costs that they've been provided if they don't follow the mandate or they don't provide information that's relevant and useful in the Ontario Energy Board's eyes.

Ms Powell: That's correct.

Mr Lessard: Have there been occasions when intervenors have been forced to pay costs to the other side?

Ms Powell: I'm not aware of any, but I'm not that close to it, so I can't answer that question with certainty.

Mr Conway: Just on that, I'm just reviewing the Consumers' Association of Canada's brief, and they say some things here that I think should give us some comfort about the past practices of the OEB. Let me again cite from the board's report and just ask for a quick response. In their brief, the Consumers' Association of Canada indicate on page 5 that, "The Ontario Energy Board is directed to facilitate competition," but they go on to say, "The energy board does not have the power to create competition." One of the board's objectives is "to protect the interests of consumers with respect to prices." The consumers' association then observes that it's unclear what powers the board has to do that.

Maybe this is a good opportunity to ask the panel, what, in your view, is the answer to the Consumers' Association of Canada's rather good and pointed question? What are the specific powers that the board has to actually carry out its mandate to protect the interest of consumers

with respect to prices, as you understand both the act and the environment in which it will operate?

Ms Powell: The board is also charged with the other parts of the objectives, that you haven't cited, concerning prices. Those very definitely are to protect consumers.

Mr Conway: The consumers' association is around the OEB a lot more than I am, so I was just struck by what —

Ms Powell: And to ensure that there is a reliable source and supply of energy. The Ontario Energy Board has been given greater powers relating to consumer protection, and those were strongly supported by the Consumers' Association of Canada. So they now have better tools to protect consumers.

Mr Conway: Notwithstanding the fact that CAC can't — I'm reading from their brief. They like the fact that the board is to protect consumers, but they say to this committee that it's unclear to the Consumers' Association of Canada what specific powers the board has to do that, namely, protect consumers in the matter of prices. It's their brief. I'm not making this up out of whole cloth.

Mr Horswill: Of course, the regulator can't create businesses, but the board certainly has a mandate to facilitate access of generators to this market through the regulation of the transmission systems and inter-ties, and certainly it has a capacity in the licensing provisions to ensure transparency so customers can make informed decisions regarding alternative sources of electricity. Those are two, we think, quite positive responsibilities of the board to facilitate and broaden competition; literally, the creating of it we're talking.

The Chair: Further questions or comments? Seeing none, we have an NDP amendment on the floor. Shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Shall section 25 carry? All those in favour? Opposed? The section carries.

Schedule B, section 26: a Liberal amendment.

Mr Conway: I move that the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by striking out section 26.

This is, for me, an important point. One of the evils of the old order is that we've had a monopoly that has been unregulated by any kind of an independent authority but it has been closely directed on many occasions by cabinet. I would have thought that one of the cornerstones of the new policy would be that we were going, to the greatest extent possible — and I don't want to be Pollyanna on this, because I understand some of the constraints. But I would have thought the one thing we would want to do would be to not give government, cabinet, the direct power that has caused so much of the problem over the past number of decades.

In section 26, the minister, meaning the cabinet, the Minister of Energy "may issue, and the board shall implement, policy directives that have been approved" by cabinet "concerning general policy and the objectives to be pursued" by the energy board.

That's sweeping, unfettered directive power for the cabinet to basically write the tune and call the tune for the

regulator. Les, you look a little incredulous, but I think one can be incredulous for other reasons. I would have thought this policy intended significant steps back from the directive power that has caused a lot of the problem. Make no mistake about what I am saying here. I believe that if this policy is going to work — I haven't got their paper with me, but I think Tom Adams and his group, Energy Probe, were quite concerned about some aspects of this, and rightly so.

1030

Either you're going to have a reasonably free and clear market and independent regulator or you're not. Section 26, as far as I can tell, carries on the old evil, the directive power of cabinet. Les, I fought against this vigorously five years ago when we were amending the old Power Corporation Act with Bill 118, because I think this kind of directive power in the hands of any politician is going to create real difficulty.

I thought one of the attractions of the current policy was that we were going to step back from that and that we were going to give the regulator a much freer hand in respect of key decisions. I lost an amendment some time ago where I moved a similar concern, and it stands out more starkly in this particular section of the energy board act, but I repeat that the argument here is that the board ought to have the power to make judgments with much less direction from the government than section 26 intends. Therefore, I'm moving that it be struck.

The Chair: I want to indicate to the members that this motion is actually out of order because the proper procedure would be that you would simply vote against it. But I know you want to speak to that issue and I'm sure —

Mr Conway: This is a technical point. I haven't done this kind of legislation in some time, but when I submit a memorandum to legislative counsel indicating what I want done, I don't expect legislative counsel to send back to me things that are technically out of order. I'm a grown person. I don't mind being told, "You can't do this." Let that be registered, for whatever purpose. If things are out of order, they should be so indicated. I'm not here to move things that are out of order. I'm basically putting material that was provided by legislative counsel.

Mrs Johns: I want to comment on what Mr Conway has said. As the shareholder of some of these corporations, we of course have some concerns. I think what is excellent about section 26 in schedule B is that for the first time these policy directives are going to be out in the open. They're going to be clear. Everybody's going to know what they are, as opposed to what used to happen before, where it would be nudge, nudge, wink, wink and off you'd go to the energy board, the Minister of Energy, and they'd say, "I think you should do this," or, "I think you should do that."

These are out in the open. They're recorded in the Ontario Gazette so people can see what the policy directives are and what we're moving towards. You can't expect the Ontario Energy Board to operate in isolation from the government of Ontario. That's the way things are. They need to know what the policy is.

When Mr Laughren was in front of us he thought this was an excellent way to move forward. I asked him this question specifically, "What do you think of the policy directives?" because he came in right after Tom Adams. I think he said: "I need to see these. It's good that everybody sees what the government is telling me to do." It's a more open, accountable process as a result of that.

Mr Conway: Let me just speak to that. I think the member is right in saying that on some occasions in the past the directive power has been very surreptitiously used, but there have been many occasions when it's been very publicly used, and it has the same perverse effect in both cases. In the debates of the early 1990s the government used a directive power in broad daylight to do some things that were clearly not things that — I'd better be careful how I choose my language here, but the point of the matter is, either you want an independent regulator or you don't. Mrs Johns, you've got to decide.

It's like the competition argument. Do you want competition or don't you? If you want competition, then you're going to have to accept what the vast majority of experts tell us are the preconditions to get that very thing. You cannot, conversely, establish barriers to prevent the very thing you say you want. Competition and regulation are, I thought, the two cornerstones of this policy. I have had deep and deepening worries about what the bill doesn't do with respect to actually creating a condition where true competition is going to be fostered. You and I will continue to differ on that.

Now I get over to the regulatory side. Trust me; I understand. I can just hear the arguments inside the department and the government over this question. These are the old arguments. "Oh my good grief, we can't let an unfettered regulator loose on something as vital as electricity and energy. They might do something on the eve of an election that would cause us no little bit of difficulty."

The little homily that Dr Galt gave a few minutes ago about how we shouldn't put caps on things — don't mistake what was done two and a half or three years ago. "I, as government, decree there shall be no rate increase for a five-year period." That's a directive power exercised — Les shakes his head. Damn right it's a directive power: That's the government telling the utility, "You're not going to raise rates for a five-year period regardless of what the market requires or what circumstances suggest."

Mrs Johns: That was Ontario Hydro where the shareholder is very different from a regulator. Let's get on to the topic.

Mr Conway: It's not different in effect. It's not different at all in effect. What is a directive power? It's government saying to a board, agency or commission, "This you can do, and this you won't do." Again, I understand that. All I thought we were doing in this policy was saying we wanted to have, for the first time, significant and meaningful independent regulation. To give you some credit, I think you are moving somewhat in that direction. However, section 26 of this particular schedule of the bill places, I think, an undue constraint on that very important aspect of this policy and I think it should be removed.

Mr Laughren gave exactly the answer I would expect him to have given. It's exactly the one I would have given had I been in his position. But we're not in his position. We're the Legislature. I look at the policy and say, "Independent regulation: I like that." Then I read section 26 of this schedule of the bill: The minister through the cabinet has got general directive power to tell the board to do any number of things. I see that as a very significant constraint on the working of the regulatory function.

Mrs Johns: I'd just like to say that I think it's important for the people who read the Hansard to understand what kind of policies we could set up under this directive. One of them would be that we could relax the constraints on green power. That's one that these people here have come up with. I think that's an admirable kind of policy. I think we need to talk about that and I think people need to know that's something we're trying to do. I think from that standpoint it sounds like this is some ominous thing, but in effect it's important that we get these policies out in the public, that people understand them, that they can work towards meeting government's policies. In that particular case, I think that would be a very attractive one to do.

Mr Conway keeps harping about the rate freeze. I'm prepared to always deal in politics, I suppose, but I have in front of me, thanks to some of my staff behind me, a December 14, 1993, Hansard from Mrs McLeod who was then, I guess, the leader of the Liberals, saying: "Ontario Hydro has decided to freeze rates. As I said, we applaud that." From that standpoint, you people were talking about freezing rates at Ontario Hydro too, so let's call a spade a spade here.

1040

Mr Conway: You've been doing a very good job of that for a long time, and part of your compelling charm is your revolutionary commitment to a brave, new world order.

Mrs Johns: Yes, because the system is broken and it needs to be fixed.

Mr Conway: That's absolutely right. The trouble is that your revolutionary zeal just fades at the point —

Interjection.

Mr Conway: No, there's such a puritanical fervour about your determination to not make the mistakes of all of those terrible old Tories and Liberals, farmers and New Democrats who were in government trying to deal with Hydro over 75 years. I applaud you for that. But what are you doing here? That's a nice little speech about, "We would not want to encumber ourselves about the possibility of directing greater green power."

That's not what you're doing here. You're doing what every old centralizing cabinet, whatever, wants to give itself. You're giving yourself absolute unfettered power to direct anything under the sun. Now it may be that you don't ever intend — I've never heard of a minister, a government say that they ever intended to do anything but the most limited things to advance the public good. Trust me, everybody says that. Look at what you're giving yourself here. There's just wide open directive power to do anything and everything. You're the one who's arguing

that we've got to change the paradigm, we've got to move away from the decisions that have caused so much of the difficulties.

Make no mistake about it. One of the problems that governments of all stripes have faced in this policy area for a long time is that they don't like some of the obvious and painful political consequences of some decisions that might have to be made in the energy or the electricity sector. They're always anxious, whether they're Liberal, Tory, New Democrat, to find some way to ameliorate those because the politics of electricity are so powerful and sometimes so very painful.

I thought this policy intended to move away from that. Again, if what you're really saying is, "Independent regulation if necessary, but not necessarily independent regulation," that's something of which I will take note. I simply make the point that this is a sweeping directive power. It doesn't limit itself to green power, it's wide open.

Mrs Johns: Wide open and transparent.

Mr Conway: My point is, we've had transparent directives before.

Mrs Johns: When?

Mr Conway: The situation in the early 1990s about the Ontario government directing Hydro to do some things that a lot of people felt —

Mrs Johns: We're talking about regulators.

Mr Conway: Trust me, it's a directive power. I don't see that there is a very great difference. There is some difference but I don't think it is a qualitative difference.

I guess my question is, why do you think you need it? What is it that a good regulatory panel wouldn't understand? Presumably they read the Globe and Mail. They might even read the North Bay Nugget. What is it that the regulator might fail to understand?

Mrs Johns: Are you suggesting that the regulator should get the policy directive of the government out of the newspapers?

Mr Conway: No, I'm suggesting that if you believe in independent regulation, you believe in independent regulation.

Mrs Johns: There are policies that are decided, for example, the green power environmental issue here, where it's important for everyone to understand those kinds of issues. This is a very important way for the government to let the regulator know some of the policy directives they have. This does not stop the regulator from enforcing to the fullest extent of his abilities. It's not taking any power away from the regulator. What it is in effect doing is saying: "These are some of the broad policies that the government believes in. For example, with green power please consider the ability to promote green power," or whatever it might be.

These are very open and everybody in Ontario knows it. In the past, people have chosen whether they wanted to tell the world or the people of Ontario about this. Right now, we're going to have to be very open and say exactly what our policy directives are when it comes to electricity and gas, and I think that's a very good thing. I don't see

how you could run this thing if you didn't have policy directives unless you did it under the table, and I think that's wrong.

The Chair: Mr Lessard, you wanted to speak to this.

Mr Lessard: I want to speak in support of the motion because what I see this section doing is really opening the door wide to political interference. As Mr Conway has said, either you believe in independent regulation or you don't. I'm reading from one of the backgrounders dated June 9, "Energy Competition in the New Marketplace." On the third page it says: "The bill also proposes amendments to the Ontario Energy Board Act. Under new legislation, the Ontario Energy Board would continue to be the independent regulator for the natural gas sector with a strengthened mandate to regulate the electricity sector and to protect energy consumers."

I have to ask the government members where the independence is for the regulator with this section being in place. The government members have been consistent in saying that what Bill 35 is supposed to do is to introduce a competitive marketplace to energy in Ontario. They're saying that in order to ensure that competitive marketplace serves the public interest and leads to lower prices, they're going to have an independent regulator, the Ontario Energy Board, with that mandate.

This is really another example of the government saying that they don't want to have power centralized in Queen's Park, and we heard that with respect to education as well, but we've seen increased centralization of power here at Queen's Park. If the intention here is for the government to continue to exercise some power in energy marketing, I think they should just say that.

There are no restrictions in this directive power in section 26, and Ms Johns has given at least one example of an area where this directive power may be useful for the government. I'm sure there are others, and if there is some intention for the government to continue to retain directive power in certain areas because they think that is in the public interest, then it would make a lot more sense to me to say that the minister may issue directives in those specific areas, because the way the section is set up right now, there are no restrictions whatsoever.

This really permits political interference if the government so chooses, and all of the good intentions of the government to have an independent regulator to ensure that a competitive marketplace is in the best interests of consumers is really defeated by this section being there. Maybe they say they never intend to use that directive power section — I doubt that — but the fact that it's there affects people's perception of what is really going on here, and that perception is that the government says they want to have an independent regulator but they still want to retain these wide-ranging powers to tell this independent regulator what to do.

I think it's wrong to retain that ability unless it's restricted in some way. That's why I support this motion, and unless the government wants to introduce an amendment to this section to say that this directive power is restricted to certain areas, I have no comfort in what the

parliamentary assistant is trying to assure us this section really means in view of what it plainly says.

1050

The Chair: Dr Galt, you're on my speakers' list. Did you want to go forward?

Mr Galt: Heavens, you remembered.

The Chair: I did. I have a list.

Mr Galt: When Mr Conway made the comment about the five-year freeze on hydro rates — he may have put it in different wording. There's a big difference between down the road and competition and having put a five-year freeze on the present monopoly. We're dealing with a monopoly, as he's quite aware. That was part of our commitment in the campaign, part of our platform, so business would know where they're at until we could bring competition into the electricity field. I just wanted to make a quick reference back to that. He'd referred to my comments earlier.

Mr Conway: Listen, I understand why a political party would do that. We've all done it, but it's not done without consequence. That's all I'm saying. The consequence is reported in this, and next year's will be even more delicious. At some point, somebody is going to have to then apportion the hundreds of millions or billions of dollars worth of downstream financial consequences of that decision. But I don't fault a politician or a group of politicians for trying to say to the broader community, "This is just terrible and painful."

It's like the US Congress. They're all for a free market until something happens with commodity X or commodity Y or until a tight election is underway and there are a few seats in the Midwest. I see all of these freewheeling free marketers in agriculture are now suddenly changing their tune about what Washington is going to have to do, because there are political and economic realities that weren't anticipated when they made the great speeches of three or four years earlier.

There are a couple of other things I want to say in this connection, and one of these sort of anticipates the next motion, but let me say it now as well. Why am I concerned about the government having this kind of direct power? Because it seems antithetical to a fundamental tenet of the new policy in ways that I've tried to articulate. But it's more than that. In this new world order, the government of Ontario has a major interest. It's not neutral, as we'll see in the next section when we get to a directive power around market power.

Who's the principal shareholder in Genco and Servco? I'm back to the old argument that I don't like a referee who also is a player in the game, and boy, is this referee — in this sense I'm talking about the cabinet and its use of a directive power. It's an unfettered directive power. It's wide open. I'd have a little less problem maybe — but it's still a fundamental concern — if it was more narrow in scope, but it's wide open.

I raise it simply because, remember, the government is not without an interest in issues that are going to be before the board. It's not without a financial-commercial interest in some of the major questions that may be before the

board and it would be possible, not hard to imagine, a situation where a government might be sorely tempted to use its directive power in this very intricate and complicated business to effect some benefit to its own commercial or financial interest with respect to matters that are before the regulator.

Ms Johns's concern about, "Please don't fence us in in our desire to do good works in the environment" — I can't believe I'm going to do this, but I'm going to read from an editorial which appeared in this morning's edition of the *Ottawa Citizen*.

Mrs Johns: Is this the one that says don't blame Bill 35 for the stranded debt and gives you the little rocky road?

Mr Conway: No, it's the one entitled "Power Surge." It says: "But Bill 35 politicizes decision-making. For starters, it asks the Ontario Energy Board, a rate-setting body accustomed to operating under a clear mandate, to also act as an environmental regulator. The energy board knows nothing about the environment" — I don't agree with that — "Yet as Bill 35 is currently worded, the board would be facilitating 'cleaner, more environmentally benign energy sources in a manner consistent with the policies of the government of Ontario.'"

The editorial goes on: "Those few words contain enough confusion and potential conflict of interest to undermine not only the integrity of the board but Ontario's entire energy sector, gas utilities included." The editorial goes on, and I guess maybe this is the point that I would want to stress, that if the government wants to set out an environmental policy, it should do so in legislation apart from directives to the energy board. I don't want to take the time to read the entire editorial.

The point here, as far as I'm concerned, is that we have a situation where the government is not without an interest, together with the fact that I thought we were trying to create a situation where the temptations for government to use a directive power would be reduced and that does not appear to be happening here. The fact that the directive power is sometimes public and sometimes private doesn't affect, in my view, the impact of that directive power on the marketplace, including the policy marketplace.

Mrs Johns: I have two comments. The first one is that I think, since we're reading this article in, we should read the first part. It says: "Some time in the next several weeks, a sad saga in this province's history — the century-long reign of an out-of-control Ontario Hydro — will end with the breakup of the giant utility's monopoly. We will start cleaning up its mess: \$30 billion in debt, exorbitant rates, a mismanaged nuclear program, the dirty coal that we continue to burn while cheaper, cleaner alternatives languish. Bill 35, the draft legislation that will lead us out of the Hydro hell, is for the most part sensible."

I also would like to —

Mr Conway: Do you want to read it or shall I?

Mrs Johns: You can in your time, if you'd like to.

What I think is important to put on the record here too is that, as I understand it from the ministry right now,

what happens at this particular time up until the new world, is that cabinet could veto a decision from the Ontario Energy Board; they could revise a decision from the Ontario Energy Board. With this new age, they will not be able to do any of that, and this is, as I understand from them, the case that happens and still exists in the National Energy Board. I think we have to say if we're up front, everybody understands the policy directive and the Ontario Energy Board makes the decision. They still have ultimate power to come out with a decision that we have to accept, which hasn't been the case in the past. I think that's good news.

Mr Conway: I'll read the last paragraph of that editorial: "If the government wants to protect the environment, it can do so directly, by passing appropriate legislation. Turning the energy board," says the *Ottawa Citizen* this morning, "into its puppets is only a prescription for political chicanery." In some ways I think this editorial is too strong and it's misguided, particularly in the sections that you read, Ms Johns.

Mrs Johns: Oh, of course.

Mr Conway: If, in Bill 35, the government was actually doing what it said it wanted to do, I would be a lot less concerned, but it is manifest that you are not doing what you said you were going to do. You are not breaking up Ontario Hydro. You are keeping Ontario Hydro largely intact because the government has bought the line that the real agenda here doesn't appear so much to be competition as it is to have a strong Ontario-based utility that can take its market power and its long expertise and get into the United States market. That's the new agenda.

1100

That's an interesting proposition. It's one that Hydro's been actively flogging for the last two or three years. I'm not nearly as expert on those possibilities as some other people, but we're not breaking up Hydro. We are clearly not breaking up Hydro. The kind of breakup that I would have expected is the kind that Macdonald advertised, that you unbundle the utility into at least three or four competing companies, to get at least a reasonable competitive environment. We're not doing that.

I want to say that for the nineteenth time: We are not breaking up Hydro. We heard from Ron Osborne himself about their intentions on the services side to grow and get bigger and stronger. We are now seeing that the government is giving itself a significant directive power around the role of the regulator.

It may very well be that a lot of my concerns are going to be shown by future developments to be unfounded. I accept that as a possibility. But I just ask myself: What are we doing here? I can't get into the head of individuals as to what their intentions are going to be. I understand that opposition politicians are by nature, and I guess by function more than by nature, people who are always looking for the concern and the bad possibilities. That is, in a sense, our job. The prosecutor is paid to make the case and the defence counsel is paid to make a different kind of case, but it's the bundle of policy decision that I'm looking at.

I guess I'll leave it at that. But I say to my friend the parliamentary assistant, and I'm deadly serious, that we're not doing some of the key things we said we were going to do and that troubles me because I worry that we will continue the possibility at least for the very kind of behaviours that you rightly do not want to see continued, your passionate protestations about the inevitability of a brave new order notwithstanding.

I was reading last night some of the material out of the United States and if I look at what's going on in some places like California, where they're further along with this thing than we are, the way this market is behaving and the things the politicians are having to do to backfill — at one level I'm not surprised. This is really complicated stuff.

I was struck by a comment made by the chair of the US Senate energy committee, Senator Murkowski, from Alaska. I just thought he put it very well when he said: "We all support competition. The challenge is making sure we get from the current fully regulated market to a more deregulated, competitive one without littering the path with unhappy consumers, bankrupt electric utilities and poor service." I think that's awfully good advice, and I will conclude my remarks with that.

The Chair: Further questions or comments? Seeing none, shall section 26 carry? All those in favour? Opposed? Section 26 carries.

Section 27: We have a Liberal amendment on page 140.

Mr Conway: I move that section 27 of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be struck out and the following substituted:

"Directives re: market rules, conditions

"27(1) In order to address the abuse or possible abuse of market power in the electricity sector, the board may issue and implement directives concerning market rules made under section 30 of the Electricity Act, 1998 and existing or proposed licence conditions.

"Hearing

"(2) A directive issued under subsection (1) shall indicate whether the board intends to hold a hearing or not."

Essentially what I'm trying to do here is remove the government's power to direct issues around — to leave market power issues to the regulator. The point I was making a moment ago is, when we talk about market power, and we're talking about a central issue, the single biggest item that stands in the way of the competitive marketplace that we all want is anybody having, particularly in the early going, a dominant position in the market.

Seventy percent of the bill has to do with generation. If there are going to be real and meaningful savings for the broad range of customer categories, we are going to have to deliver the benefits of competition in the generation sector especially. That is not to say, as my friend from Scarborough would want me to say, that we should be looking to get the efficiencies downstream in distribution and transmission. I agree with him, but let's not kid ourselves: 15% of the bill is in distribution, 70% of the bill is

in generation. That's where all the analysts say the single biggest benefit of competition is going to arise.

There's no doubt that there are real concerns about market power; Hydro itself has acknowledged that. It's just this bizarre situation in which we find ourselves. I thought we were about unbundling Hydro and returning it to a condition where it once existed. There's a lot of misunderstanding that Hydro was intended to be, or always was, the monopoly supplier. That was never the original plan. It became that over time, but in the post-Second World War period, and particularly with the nuclear commitment, it did become for all intents and purposes the monopoly supplier.

The intention was, I thought, to create a competitive marketplace; as a critical first step to disaggregate, unbundle Ontario Hydro, at least into three or four competing utilities, as was suggested by the Macdonald committee in vivid, powerful and, I thought, compelling language. When I look again at the second report of the Market Design Committee and I look at what they found, in particularly some of the Australian experience as reported in the June 30 report, it was quite interesting. We're not doing that, because the government in the white paper said, "That's off limits." We've got a situation where we're not going to unbundle Ontario Hydro. We're not. That's clearly not an option. You heard the —

Mrs Johns: We're unbundling Hydro. There's the Generation Corp and the Financial Corp.

Mr Conway: We're not going to disaggregate the generation of Ontario Hydro. Thank you for that. That's a very helpful correction. That ignores powerful advice from powerful people who say that, without that, you really do cause yourselves some real difficulty in getting the benefits of competition you've got to get to deliver the rate benefits that people are expecting. Now we have, in addition to that, the situation where we've got a regulator that is going to be directed by the principal shareholder of the very people who are going to cause us the trouble with market power. That's the problem I have with 27.

1110

I'm trying to think of an analogy, but it's so breathtaking that it's hard to imagine one, where you would be in a situation in a multi-billion dollar market as the principal shareholder in the players that everyone expects are going to cause uncompetitive pressures, are going to cause the problems of market power. Why? Because as Osborne told us, on day one Ontario Hydro is going to have about 85% to 90% of the market share. Now we're giving, in this section, a power to the minister that he may direct the energy board to implement directives that have been approved by the cabinet with respect to market rules made under section 30 of the Electricity Act.

I just think, given the conflict of interest that exists there, we would want to deal with that. I think the only way we can deal with it is to say that as big and as powerful a player as the Ontario government is, the sole shareholder in Genco is not going to be in a position to play and referee that game. The game here is about market

power and the abuse of market power. Remember, that's what we're talking about.

I just don't think we would tolerate this as a government in very many other places because people would be just laughing at you, saying the conflict here is so transparent that you do not want to create a fiction that you're going to be able on the one hand to be the owner of the very player that is likely to give you the problem, and at the same time split your personality and imagine a second part of yourself as directing the regulator to ensure that the other half of yourself, which owns the big player that's likely to cause you the uncompetitive problems, is going to be directed to behave itself. The more you think about it, the more laughable it becomes.

It's hard for me to imagine how this isn't a real problem. If the government wasn't the sole shareholder in Genco going in, then I think much of my complaint would be set aside, but that's not the case. Because it is, I think there has to be some action taken to deal with the problem; hence, the amendment.

Mrs Johns: We've dealt with this abuse of market power issue on a number of Liberal amendments and I think it's important for me to say again that there are a number of ways that the Ontario Energy Board can deal with an abuse of market power. They could use the ministerial policy directive, which is what we're talking about in this particular case. They could also consider a request from any person. For example, if someone feels that they are being unfairly dealt with as a result of abuse, they could make a complaint to the Ontario Energy Board and the Ontario Energy Board could look into abuse of power.

Of course, the IMO's Market Surveillance Panel can ask the board to look at that. The IMO, as we all know, is where all of this power is going to be collected. They're going to be watching the power come into this system and they will see if there's abuse of market power in the purchasing of their electricity. So to suggest that this is an unfettered power I think is incorrect.

What Liberals want to do in this amendment is change it from ministerial policy directives to the Ontario Energy Board policy directives. I think it's important to note that the Ontario Energy Board has a number of opportunities on how they can remedy abuse of market power, and we've talked about them.

The other thing that is a fundamental kind of comment that the Liberal Party has made over the last four days we've been in clause-by-clause is this whole thing about the Market Design Committee — and I understand; everybody's concerned about market power. We talked a bit when Ron Daniels was here in committee. He came to us and he said: "The Market Design Committee," and I think I'm quoting exactly, "has studied the market power problem in considerable detail over the past few months, and our second-quarter report makes specific recommendations to the government on how to curb Genco's power in the short term while reducing it over the long term, over time. We believe an effective package of market power mitigation measures must accomplish three things. The measures must control Genco's ability to exercise market

power as long as the company remains Ontario's dominant power generator; the measures must encourage the development of competitive alternatives so that over time Genco's dominant position in the market will be reduced; and the measures must provide some incentive or inducement for Genco itself to work towards reducing its dominance in the market."

We've made a number of amendments and gone through a lot of amendments, and we apologize for that. But what happened was that this bill came out before the second report, and we've made a number of amendments to ensure that the abilities to curb market power that were outlined in the Market Design report have been put in. They specified some six or seven of them, maybe more: divestiture, corporate reorganization of the dominant generator's assets, auctioning, bidding contracts, vesting contracts for differences, cross-ownership limitations, new capacity limitations, demand-side responses in bidding, bilateral contracts, refinement of power pool rules, price caps and bidding caps.

So as much as you would have preferred to see Genco split a different way, and I understand that we all have different visions of how we would like to see this done, there is a way to curb market power. There are ten ways, I guess, that the Market Design Committee has come up with to curb market power. We're sure that the strength of the Ontario Energy Board and these measures that the Market Design Committee has come up with, will allow us to do that.

Mr Conway: I appreciate what the member is saying, and let there be no mistake about it: I understand, on the basis of what Ron Daniels and others from the Market Design Committee said when they testified here in late August, that a number of measures to mitigate market power are contemplated. That is obvious. What is equally obvious is that by common consent, the measures being considered are all in the second-best category. There are few people in the debate who would not agree with the Macdonald recommendation about the first-order importance of disaggregating the generating assets of Ontario Hydro. That is, by common consent, the third option. The government, for reasons that I can privately understand, specifically ruled that out in the white paper. So we are now left to see what other measures are possible. Presumably we will be hearing about that in the next report and in later reports from the Market Design Committee and other bodies. But I repeat, we didn't do what most people say you ought to do to get the best and the cleanest policy with respect to market power.

I make the final point, as the days draw to a conclusion, three cheers to Farlinger and Osborne. They are getting virtually everything I have heard Hydro brass say they have wanted for the last four or five years — everything. It may be that they are actually getting more. We won't know that for a few months and maybe a year or two to come. So I tip my hat to people who can pull that off. That's not what I thought we were about. I'm not here to destroy public power. There is an important role for public power. But I think the member for Huron has passionately

and persistently made a good case for why we would not want to give Ontario Hydro almost everything they have said they wanted over the last three or four years. But three cheers to 700 University — yet another coup d'état under a bright Ontario sun.

1120

Mr Lessard: I just have one question, on reading this section and the amendment: How is it that the minister, the representative of the sole shareholder, can tell the regulator that the very corporation he represents as the sole shareholder is abusing market power? I can't understand how that works. If Ms Johns can help me clarify that, I could try to understand this. I understand what you said. The government is the main shareholder. The minister represents the shareholders, but he's retaining the power to tell the regulator that the corporation he's the shareholder in is abusing market power.

Mrs Johns: That's not exactly what is said in here. Everybody agrees that we're the main shareholder, for better or worse. We have been forever and we will continue to be for a period of time, depending on whether we enter some joint agreements with other people or what we do with it. So I agree that we are the major shareholder of Genco and Servco for a period of time. There is no question about that.

But it's not just the minister who suggests that there is abuse of market power. It can be any individual who comes to the board and says there's abuse of market power. It could be the market surveillance people. What Mr Conway is basically saying in this amendment is that he would like the Ontario Energy Board, under its own directive, to be able to search out market power. I understand that that's where he would like to be.

We're saying that there are other options of who can be concerned about market power and can ask the Ontario Energy Board to look at it. It's not only the minister; it's the people who actually buy the power from the generators, who would obviously be aware of that. It's also any person who feels that they are poorly treated, in the initial cases, as a result of Ontario Hydro abusing its market power. In the future, it could well be Northland Power that has all the power. It could well be Duke Energy, as Mr Conway has said. It could be any one that was there. As the shift changes, I think the minister has a role, as do the people who feel the abuse of market power and the people who are buying the power.

I just don't understand where your problem is with this, because it's not always going to be the Ontario Hydro problem. In the future, it could be the Duke problem, it could be the Hydro-Québec problem, it could be the Manitoba Hydro problem. It could be anywhere in the world. If you have a crystal ball that tells you it's only going to be Ontario Hydro from now to eternity, you've got a better crystal ball than I do.

Mr Conway: On that, I think the member from Windsor says it so much better than I. In fact, I'd almost like him to repeat the way he put that, because it's so wonderfully delicious — it is. Just think about it. Think about what he said. We are setting up a situation in which we

know that in the transition phase, market power and the abuse of market power has the potential to be the single, biggest impediment to delivering the biggest, single benefit that we would advertise with this policy, namely, downward pressure on rates due to competition. Right? Right.

I'm thinking now about the transitional phase. What Ms Johns says is potentially quite right seven years out, 10 years out, 15 years out, whatever. At that point, abuse of market power is certainly going to still be there, but it's not going to be of the order of magnitude you will have going into an unregulated market with one player having 85% to 90% of the market.

We've got this situation where, in the early going of a transition to a competitive marketplace, we have mother Hydro, now in the name of Genco, the sole shareholder of which is going to be the Ontario government, the Ontario taxpayers. We are worried, rightly, that there may be some anti-competitive behaviour in the marketplace by the gargantuan Genco. Most reasonable people tell us that that's a legitimate worry. So now what are we doing? We're saying we're going to give the minister a significant role to play in directing the energy board in the mitigation of potential market abuse, except the minister is also the principal shareholder of the corporate entity that is likely to be the problem that is going to be the issue before the energy board. This is where you get to the conflict of interest.

I don't have any difficulty with what Ms Johns said about other players. It's kind of like, I don't want the Royal Bank directing the federal competition bureau on matters of framework consideration for the bank mergers. Why? Because, notwithstanding the wonderful qualities of the Royal Bank, they are not without an issue in the matter before the competition bureau.

Mr Baird: The Royal Bank's a private business.

Mr Conway: That's right, but trust me, it doesn't make —

Mr Baird: Let's hope the minister will look at the public interest. Let's hope we have a Minister of Finance who does that.

The Chair: Order. Through the Chair, please. Mr Conway has the floor.

Mr Conway: My point is that in this matter, the Minister of Finance and the Minister of Energy have a public interest, but they've also got an institutional and corporate interest. It's one that's clearly set out by this policy. They have dividend considerations from their holding in Genco. They have other considerations of a financial kind that have to be expected to animate their behaviour, all of which is to say that the minister is a major player because he is the owner, at first instance, of the biggest fish in this pond. We expect that that fish is going to give us some anti-competitive behaviour in the critical transition phase from regulation to deregulation, from monopoly to competition. It's an obvious conflict of interest that the minister, as the trustee for the shareholder in Genco, has that is the reason for this concern and for the amendment.

Mrs Johns: I'm sure the Ontario Energy Board, if you look at section 2, has the ability to hold a hearing or not hold a hearing with the minister's directive. It has the ability to hold or not hold a hearing as a result of an IMO market surveillance report. It has the ability to do that. So we're not saying, "Oh my God, you have to listen to every" — they have to consider the policy directive, but they have the ability to decide how they want to proceed and on what they're going to proceed and how tough they're going to be on the abuse of market power. I guess I just don't get what you're saying. I'm sorry.

Mr Conway: Andy Scott believes Dick Proctor has poor hearing too.

Let's look at section 27. Section 27 says that in matters relating to real or potential abuse of market power "the minister may issue, and the board shall implement" —

Mrs Johns: The minister and Lieutenant Governor, that means the cabinet.

Mr Conway: Exactly.

Mrs Johns: The cabinet has the public interest, one would like to assume.

Mr Conway: Don't test me on the intricate political science — "the minister may issue, and the board shall implement...." There are other things in here, but let's not kid ourselves about what 27 provides. The language is very clear. I'm not going to belabour the point. It's obviously not going to go anywhere. But the minister is clearly both player and referee in a game. In this particular instance, the concern we have is that the player, namely, the minister — going in we're worried about misconduct. We know that Big Bobby Clobber has a very bad tendency to elbow, and we're worried about elbowing. But we're letting Big Bobby Clobber kind of direct the referee on matters relating to elbowing and other such misconduct. That's what 27 is all about.

Mrs Johns: I have a message from the Ministry of Energy here and I'd just like to read this into the record. It may help us here:

"Policy directives were used in one circumstance as a last resort in 1991. All this section does is say, when there is a clear trade-off between general public interest, the taxpayer and competition, then the elected government can intervene."

1130

Mr Conway: Again, that's helpful. But I'm looking at 27. We're talking about market power. If you had done what people said you should do about being with market power in the plainest and most appropriate way, then again, I wouldn't have this concern. But you didn't do that. You've created a situation as we head into the new, competitive marketplace. You're setting it up so that Genco is going to have 85% of the market power on day one, give or take a bit, overwhelming market power. That's what we're dealing with here.

I think that since market power is a central concern, and will be to the possibility of there being lower rates, or these competitive rates, for all classes of customers, then I have to tell you that I'm very troubled by a situation in which government is allowing a dominant Genco to con-

tinue to head into a marketplace where that kind of dominance is, on the basis of a lot of good evidence, very likely to lead to a variety of uncompetitive practices.

We are saying in 27, should this not be amended? But it doesn't trouble this legislature that on matters of market power, the owner of the biggest and most likely to offend player, with respect to market abuse, is going to have a significant if not a central role in directing the regulator about how that regulator might behave with respect to mitigation measures for bad behaviour that the government, through the Minister of Energy, might be directly or indirectly responsible for developing and sustaining. I think that's incredible.

Mrs Johns: And I think that's fundamentally where we disagree. I'd say there is — I stepped in; I'll just wait until Mr. Lessard speaks.

Mr Lessard: I just want to emphasize that the critical period for consumers here is going to be the transition period, where this new, competitive marketplace comes into being.

I understand Ms Johns comments about how abuse of market power in the future makes it important for the minister to retain this directive power to the Ontario Energy board. But I think that seven or 10 years down the road if Duke Energy or somebody else is abusing their market power, that's going to be apparent in the marketplace and to consumers and to the government.

My concern as we head down this road into a new world order, so to speak, is that it isn't going to be so apparent to consumers or to the government during that transition period, and that's the time we need to be on the lookout for. I think it's completely inappropriate for the minister to be the one who is going to make that call. I agree with Mr. Conway's suggestion that the reference to the minister having that power should be removed. I think it would give us all a great deal of comfort to know that he or she is not the one who is making the calls. That's my point.

Mrs Johns: I guess this is where we're going to disagree, because I believe that we have to be concerned about what the people of Ontario think. They're the people who have the \$32 billion. If, as Mr. Conway has suggested, you give the responsibility to the Ontario Energy Board — and he really is saying in isolation, although I don't agree with that because there is the IMO and there are other people. But if you give that power to the Ontario Energy Board, who is representing the people of Ontario?

Mr Lessard: That's a good question. They're not even going to know what's happened to them until two or three years after this policy gets implemented.

Mrs Johns: They're going to know what's happened if this system doesn't work. Trust me on that issue. They're going to know very well what happened —

Mr Baird: They know what happened to the rates.

Mrs Johns: Yes. They understand what happened in the last 20 years.

Mr Conway: Let me just say, to be fair to the last 20 or 25 years, that very little was done at a macro level in the last 25 years that did not enjoy a very clear democratic

sanction. I have to tell you, at the risk of being impolitic, that what we have today bears the clear imprint of big labour, big business and big government. They were all singing from the same hymn book, three hallelujahs of praise to what we were doing.

At critical points the matters did get submitted to the general electorate. But because these things are so complicated — I can remember people, for example, talking about the old system. Some very powerful arguments were made about the way you brought the capital cost of the big nuclear plants into rates, and a lot of very good criticism was advanced. None of the decision-makers paid any attention to it. It certainly wasn't changed.

It led to a very real calamity in the early 1990s when the Darlington plant was finally completed. As luck would have it, we were heading into an awful recession, when the last thing people wanted to see showing up on their bills, both residentially and industrially, was 15 years and \$15 billion worth of Hydro spending and borrowing and costing for that particular facility. I just want to say that this stuff was debated quite vigorously. The difficulty was that it was complicated, very complicated. And I'll tell you, this stuff is equally complicated, if not more so.

I'm sure that any number of people will look at my comments and say: "What a clown. He doesn't know anything of which he speaks." In many cases they're right. I'm just a generalist. I'm just a legislator. I haven't got the faintest idea of how many of these intricate administrative and regulatory and corporate policies are going to work. What I am concerned about is that we establish a framework that provides reasonable protection. One of the reasons that I'm as keen as I am about the amendments to 26 and 27 of the Energy Board Act is that I do not like the fact that government is in this business not just as a trustee for the broad public interest, but with very real and significant corporate and financial interests, which are entirely understandable.

Mrs Johns: We have no choice.

Mr Conway: That's absolutely right. We have no choice. But I don't think people should just expect that when governments have financial and corporate interests, they are going to behave in a purely altruistic sense. I quite frankly expect governments, in the management of their financial and corporate interests, to behave like most people would behave with respect to their financial or corporate interests.

On this I think there is a very real problem, as my friend from Windsor says, particularly through the transitional stage. But I understand that we're not going to agree. I think I've said enough, maybe too much, on this question. Time will tell. Ten years from now some academic at the University of Toronto will produce a fascinating study about how the people of Ontario got hosed to the tune of \$800 million through a variety of intricate mechanisms that no one understood until Les Horswill wrote the definitive piece published by the Queen's school of business and commerce or something.

Mrs Johns: On the other side maybe you could write the piece that says how we finally came out of a debt that

was going to continue to accrue on the backs of the shareholders and the taxpayers of Ontario, and that the system is working so much better 10 years down the road than on the other side. We can look at it both ways, and we can certainly work towards having the latter as history, as opposed to the former.

Mr Conway: Absolutely.

The Chair: Further questions and comments? Seeing no further questions and comments, shall the Liberal amendment on section 27 carry? All those in favour? Opposed? The amendment is lost.

Shall section 27 carry? All those in favour? Opposed? This section carries.

1140

Mr Steve Gilchrist (Scarborough East): Madam Chair, I wonder if I might ask the indulgence of the Chair and the other members to introduce two amendments out of order. The first one will require going back. It's my understanding that both of the opposition members are amenable to that suggestion as it affects the amendments that would create a new Toronto District Heating Corporation Act. I guess I have to seek unanimous consent to revert.

Mr Conway: Unlike the government member for Nepean, I'm not in the business of denying unanimous consent for good works.

Mr Gilchrist: Such charity is duly noted.

Mr Conway: I just noticed yesterday.

Mr Lessard: In the spirit of co-operation and camaraderie that we have enjoyed during our clause-by-clause hearings, I want to offer my consent as well.

The Chair: You have asked for unanimous consent that this be introduced, even though you know that it's out of order and that you also need to reopen section 1. Unanimous consent has been received. As the Chair, I have to allow the deadline for this to be waived, and I agree upon this receipt. OK, no problem. The deadline's changed for receipt of amendments as of now only. I guess you need to move this first and then we'll have discussion of it.

Mr Gilchrist: The first is a fairly minor amendment. The substance is in the second.

I move that section 1 of the bill be amended by adding the following subsection:

"Toronto District Heating Corporation Act, 1998

"(2.1) The Toronto District Heating Corporation Act, 1998, as set out in schedule B.1, is hereby enacted."

The Chair: Do you want to discuss this?

Mr Gilchrist: I'll save my comments for the second amendment.

The Chair: The advice from the clerk is that we should vote on this first and then read the remaining one in. The amendment has been moved. All those in favour of this motion? Carried.

You can start reading the second one.

Mr Gilchrist: I move that the bill be amended by adding the following schedule:

"Schedule B.1, Toronto and District Heating Corporation Act, 1998;

"Definitions

"1. In this act,

"'corporation' means the corporation continued under subsection 2(1); ('société')

"'hospitals' means Mount Sinai Hospital, Sunnybrook and Women's College Health Sciences Centre, the Hospital for Sick Children and the Toronto Hospital; ('hôpitaux')

"'regulations' means the regulations made under this act; ('règlements')

"'steam' means steam or hot water. ('vapeur')

"Corporation continued

"2(1) Toronto District Heating Corporation is continued as a body corporate with share capital.

"Business Corporations Act

"(2) The corporation shall be deemed to have been incorporated under the Business Corporations Act.

"Articles of incorporation

"3. The following provisions shall be deemed to be the corporation's articles of incorporation and may be amended or restated in accordance with the Business Corporations Act:

"1. The name of the corporation shall be the Toronto District Heating Corporation.

"2. The address of the registered office of the corporation shall be P.O. Box 310, Royal Trust Tower, Suite 4018, Toronto-Dominion Centre, Toronto, Ontario M5K 1K2.

"3. The number of directors of the corporation shall be a minimum of one and a maximum of 10.

"4. The corporation is authorized to issue an unlimited number of common shares. The rights, privileges, restrictions and conditions attaching to the common shares are as follows:

"i. Payments of dividends: The holders of the common shares shall be entitled to receive dividends if, as and when declared by the board of directors of the corporation out of the assets of the corporation properly applicable to the payment of dividends in such amounts and payable in such manner as the board directors may from time to time determine. Subject to the rights of the holders of any other class of shares of the corporation entitled to receive dividends in priority to or concurrently with the holders of the common shares, the board directors may in its sole discretion declare dividends on the common shares to the exclusion of any other class of shares of the corporation.

"ii. Participation upon liquidation, dissolution or winding up: In the event of the liquidation, dissolution or winding up of the corporation or other distribution of assets of the corporation among its shareholders for the purpose of winding up its affairs, the holders of the common shares shall, subject to the rights of the holders of any other class of shares of the corporation entitled to receive assets of the corporation upon such a distribution in priority to or concurrently with the holders of the common shares, be entitled to participate in the distribution. Such distribution shall be made in equal amounts per share on all the common shares at the time outstanding without preference or distinction.

"iii. Voting rights: The holders of the common shares shall be entitled to receive notice of and to attend all annual and special meetings of the shareholders of the corporation and to one vote in respect of each common share held at all such meetings.

"5. No share in the capital of the corporation shall be issued or transferred without the consent of the directors expressed by the votes of two thirds of the directors at a meeting of the directors or by an instrument in writing signed by two thirds of the directors.

"6. The number of shareholders of the corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the corporation, were, while in that employment and have continued after the termination of that employment to be, shareholders of the corporation, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

"7. Any invitation to the public to subscribe for securities of the corporation is prohibited.

"Shareholders

"4(1) Common shares of the corporation shall be deemed to have been issued on the day this section comes into force to the following persons:

"1. Her Majesty in right of Ontario.

"2. The city of Toronto.

"3. The governing council of the University of Toronto.

"4. The hospitals.

"Number of common shares

"(2) The number of common shares of the corporation that are deemed to have been issued under subsection (1) is as follows:

"1. To Her Majesty in right of Ontario, 2,000 common shares.

"2. To the city of Toronto, 4,000 common shares.

"3. To the governing council of the University of Toronto, 2,000 common shares.

"4. To each of the hospitals, the number of common shares prescribed by the regulations, so that, in total, 2,000 common shares are deemed to have been issued to the hospitals.

"Directors

"5. The directors of the corporation who hold office on the day this section comes into force shall continue to hold office in accordance with the terms of their existing appointments.

"Supply of steam to hospitals

"6(1) Despite section 55 of the Public Utilities Act, the board of directors of the corporation shall conduct the business of the corporation so that the requirements of the hospitals for steam throughout the year for their facilities that were supplied by the corporation on the day this section comes into force, and for any new expansion of or modification to those facilities, will be given priority over any other users of steam supplied by the corporation.

"No breach of contract

"(2) Nothing done under subsection (1) shall be deemed a breach of contract by the corporation or entitle

any person to rescind any contract or release any guarantor from the performance of the guarantor's obligation, or render the corporation, its officers, directors, employees or agents liable in any action at law or other legal proceedings for damages or otherwise.

"Rates for steam

"(7(1) Subject to subsections (3) and (4), the rates for steam supplied by the corporation to its customers shall be set by the corporation in such amounts and for such periods of time as the corporation considers appropriate and in setting such rates the corporation may use its discretion as to the rates to be charged to the various classes of its customers.

"Charges for work etc.

"(2) The corporation may fix the charges for the cost of any work or service done or furnished for the purpose of a supply of steam, and the rent of or charges for fittings, apparatus, meters or other things leased or furnished to its customers.

"Collection of accounts

"(3) The corporation may provide for the collection of the rates, charges and rents referred to in subsections (1) and (2) and the times and places when and where they shall be payable, and for allowing for prepayment or punctual payment such discounts as may be considered expedient.

"Appeal to Ontario Energy Board

"(4) Where the rates referred to in subsection (1) are increased by the corporation, a customer affected thereby may appeal to the Ontario Energy Board, which may fix just and reasonable rates, and the decision of the Ontario Energy Board is final and binding.

"Same

"(5) A decision of the Ontario Energy Board under subsection (4) remains in effect for the period of time for which the rate was originally fixed by the corporation, and thereafter until such time as the corporation changes the rates under subsection (1).

"Purpose of corporation

"8(1) For the purpose of the Public Utilities Act, the corporation shall be deemed to have been incorporated for the purpose of supplying a public utility.

"Municipal Franchises Act; Public Utilities Act, section 58

"(2) The Municipal Franchises Act and section 58 of the Public Utilities Act do not apply to the corporation.

"Work on highways etc

"9(1) The corporation shall notify in writing the municipality or other authority having jurisdiction over any highway, public lane or public communication on, over, under or across which the corporation proposes to put down, place, install and maintain conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances, equipment, materials, structures or works, and shall submit to the municipality or authority the corporation's plans therefor.

"Location

"(2) The conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances,

equipment, materials, structures or works shall be put down, placed and installed in such manner, and in such location on, over, under or across the highway, public lane or public communication, as the municipality or authority may direct, and the corporation shall restore the highway, public lane or public communication to its former state and any dispute between the corporation and the municipality or authority as to the manner and location of putting down, placing and installing shall be referred to the Ontario Municipal Board, and the decision of the Ontario Municipal Board shall be final.

"Indemnity

"(3) The corporation shall indemnify and save harmless the municipality or authority against, from and for any and all damages, claims, losses, costs and expenses sustained or incurred by reason of the negligent use, operation, maintenance, installation, placing and putting down of the conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances, equipment, materials, structures or works by the corporation, its agents, employees, contractors and subcontractors.

"Agreements

"(4) The corporation and any municipality or any other authority referred to in subsection (1) shall enter into agreements which incorporate the provisions of subsections (1), (2) and (3) and further provide for the continuing and future use by the corporation of any highway, public lane or public communication, the compensation to be paid to the municipality or other authority therefor and such other terms and conditions as may be agreed to by the parties.

"Public Utilities Act

"(5) This section applies despite the Public Utilities Act.

"City may provide funds

"10(1) The city of Toronto is authorized and empowered to provide funds to the corporation to enable it to carry out its activities and the funds advanced to the corporation by the city shall be on such terms as the city may from time to time determine.

"Subsection 111(1) of the Municipal Act

"(2) The operations of the corporation shall be deemed not to be a manufacturing business or other industrial or commercial enterprise for the purposes of subsection 111(1) of the Municipal Act.

"City may own shares

"11. The city of Toronto may acquire, hold and sell shares in the capital of the corporation and of any corporation into which it may be amalgamated.

"Hospital Labour Disputes Arbitration Act

"12. The steam plant of the corporation located on the steam plant site described in the trust deed dated as of the 15th day of December, 1972 between the Toronto Hospitals Steam Corporation and the Canada Permanent Trust Corporation and all related equipment and facilities and any other site used to generate the supply of steam are deemed to be a hospital and persons employed thereat are deemed to be hospital employees for the purposes of the Hospital Labour Disputes Arbitration Act as long as the

steam generated therefrom is being supplied to the hospitals or any of them.

"Regulations

"13(1) The Lieutenant Governor in Council may make regulations,

"(a) fixing, for the purpose of subsection 4(2), the number of common shares of the corporation that are deemed under subsection 4(1) to have been issued to each of the hospitals;

"(b) limiting the business activities in which the corporation may engage;

"(c) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this act;

"(d) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purposes of this act.

"Regulations under clause (1)(b)

"(2) A regulation under clause (1)(b) shall not restrict the corporation's ability to engage in any business activities related to the production, generation, transmission, distribution or sale of steam, chilled water, electricity or anything ancillary to steam, chilled water or electricity.

"Toronto District Heating Corporation Act, 1980

"14(1) Sections 2 to 14, 17 to 22 and 26 to 31 of the Toronto District Heating Corporation Act, 1980 are repealed.

"Same

"(2) References in the Toronto District Heating Corporation Act, 1980 to provisions that are repealed by subsection (1) shall be deemed to be references to those provisions as they read immediately before subsection (1) came into force.

"Commencement

"15. This schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

"Short title

"16. The short title of the Act set out in this schedule is the Toronto District Heating Corporation Act, 1998."

1150

I think the members opposite have been briefed by their staff. I'm most grateful for their co-operation.

Speaking to the reason for its coming when it did, this was a matter that had to be dealt with by Toronto city council, to be fair to them. They have sent documentation that they are in full support of the amendments which have just been read into the record. We have a letter from Dennis Fotinos, who is currently the chair of the Toronto District Heating Corp. In addition, we've received letters from everyone from Pollution Probe to Canadian Institute for Environmental Law and Policy and the mayor, the University of Toronto and Hospital for Sick Children and others supporting these changes.

It changes the existing heating corporation into a corporation incorporated under the Business Corporations Act, which allows them certain greater flexibility in terms of dealing with the competitive marketplace which we are now envisaging under Bill 35.

The Chair: Further discussion?

Mr Lessard: I had an opportunity to speak to Jack Layton from Toronto city council with respect to this amendment. He was very enthusiastic about the prospect it holds with respect to deep-water cooling in Lake Ontario and the benefits, environmental and economic, that would deliver. It's as a result of that conversation I had with Councillor Layton that I'm happy to support this amendment.

Mr Conway: I'm similarly happy to support the amendment. I didn't speak to anybody on council. I just spoke to the lobbyists. I must say it was a reminder — a wonderful fellow. I won't name him because it's so secret. It made me think. I thought, "This is a good idea."

The lobbying around the minor but very good idea just made me think about what's going on that I'm not hearing about because, let me tell you, the lobbying on this little happy front, which I'm pleased to support, was one very vivid reminder of all the other kicking and scratching that's going on underneath the waterline in this endless game of water polo, where the Marquess of Queensberry Rules apply above the waterline and that which goes on underneath is an entirely unregulated matter.

Mr Baird: Tell us more.

Mr Conway: I wouldn't want to embarrass you.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment carries.

Time to introduce one more amendment before lunch. It's an NDP amendment to section 28, found on page 141.

Mr Lessard: I move that section 28 of the Ontario Energy Board Act, 1998, as set out in schedule B —

The Chair: We have a vote called. I'm sorry. I'm going to interrupt. We will recess and we'll reconvene this afternoon at 3:30 in this room.

The committee recessed from 1157 to 1531.

The Chair: Good afternoon, colleagues. We resume clause-by-clause deliberation of Bill 35. Mr Lessard was just about to introduce an NDP amendment to section 28 found on page 141.

Mrs Johns: Can I just ask a question? Mr Lessard's amendment would be before mine at 28(3)? Is that because his is 28 as a general?

The Chair: His is subsection (1.1).

Mr Lessard: I move that section 28 of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by adding the following subsection:

"Meaning of 'public interest'

"(1.1) In subsection (1), the public interest includes, but is not limited to, protection of the environment and protection of consumers."

In the previous section it says that the board shall refrain from exercising its power if there's enough competition to protect the public interest. I think it appropriate to define the public interest and not just assume that competition itself defines what's in the public interest. In that regard, I'm concerned somewhat about the possibility of cutthroat competition or the limitations on the amount that competitors have to spend on the environment. By putting

the definition of "public interest" in the bill, it's not restrictive of the definition of "public interest" but is inclusive so that it does include protection of the environment and protection of consumers as part of that public interest, so that when the Ontario Energy Board is determining what is in the public interest they do include considerations with respect to the environment as well.

Mr Galt: I appreciate the member's comments and concerns; however, in the Environmental Protection Act there is a broad definition that already covers this as it relates to an adverse effect and everything that would have a negative impact on human health to loss of enjoyment of property. I think it is reasonably well covered and will be further covered in regulations that will be made to ensure that consumers are also protected. I appreciate his comments and concerns but I think his concern is well covered in the existing legislation and in future regulations.

Mr Lessard: I'd like to know how the Environmental Protection Act relates to the work that the Ontario Energy Board does in protecting the public interest. I understand that the Environmental Protection Act provides for environmental protection pursuant to that legislation; I don't know how it relates to the work that the Ontario Energy Board does, however.

Given the lack of response that I'm receiving, I can only assume that the two aren't related and I think that's a good enough reason to ensure that protection of the environment is included as part of the definition of public interest in the work the Ontario Energy Board does.

I don't know if my friend is going to give me the same argument that maybe we're adding too many words to the bill this time, but if he's interested in ensuring that protection of the environment is considered by the Ontario Energy Board when they're doing their work to protect the public interest, it doesn't take away from that responsibility they have. It doesn't change the policy direction of the bill, I wouldn't think; it just further enhances their responsibility to consider the environment in making their decisions. I think that's a reasonable suggestion.

Mr Galt: The Ontario Energy Board is not there as a protector of the environment; that's not its main purpose. The Environmental Protection Act is there for that protection, in the area you're concerned about, and also the fact that regulations will be made to be part of this particular act for the Ontario Energy Board to ensure that consumers are protected. As I said earlier, I think the protection is there.

Mr Lessard: I take it from the response that protection of the environment isn't going to be part of the considerations at the Ontario Energy Board when they're determining the public interest. If that's the policy decision of this government, then so be it.

Mr Galt: It appears that the NDP insists on getting in the last word to try and indicate that the government isn't concerned, but I can assure you that the government is very concerned. If you had a track record in the NDP government of environmental protection that this government has, it would be one that you would be proud of.

Instead, what you people were doing was a lot of talk and very little action.

Mr Lessard: I leave it to the independent Environmental Commissioner to make that judgment and I depend on the opinion that she has given with respect to the performance of this government, which hasn't been very complimentary.

The Chair: Further questions and comments on this amendment? Seeing none, I put the question: Shall this amendment carry? In favour? Opposed? The amendment's lost.

We have a government amendment to the same section, 28.

Mrs Johns: I move that subsection 28(3) of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be struck out and the following substituted:

"Where determination made

"(3) For greater certainty, where the board makes a determination to refrain in whole or in part from the exercise of any power or the performance of any duty under this act, and does so refrain, nothing in this act limits the application of the Competition Act (Canada) to those matters with respect to which the board refrains."

We put this in because the Competition Bureau felt that some people may interpret that the Competition Act did not apply when the Ontario Energy Board had decided to forbear. We put this in to give them a degree of comfort.

Mr Lessard: I guess that's kind of in line with the amendment I just put that was defeated, to give consumers and people who are concerned about the environment some sort of comfort. But I guess those people really aren't as important as the other ones that are referred to in this motion.

Mrs Johns: Mr Lessard, as you know, we have set up in the purpose clauses that we're concerned about the environment, we're concerned about consumer protection.

Mr Lessard: Talk is cheap too.

Mrs Johns: That's what we do as politicians, is talk and make sure things get implemented. I'm sorry you feel that way.

Mr Conway: I'm for making those trains run on time. The Rome-Bologna express will be made to run on time, Parliament be damned.

The Chair: Further questions and comments on this amendment? Seeing none, I put the question: Shall this amendment carry? All those in favour? Opposed? The amendment carries.

Further questions or discussions to section 28? Shall section 28, as amended, carry? All those in favour? Opposed? It carries.

Section 29: We have a Liberal amendment found on page 143.

1540

Mr Conway: I move that section 29 of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by adding the following subsection:

"Application of ss. (1-5)

"(6) Subsections (1) to (5) also apply, with necessary modifications, in respect of any formal or informal process

that is not a proceeding but through which the board performs its functions under this act and the Electricity Act, 1998.”

This amendment derives from advice tendered to the committee by the consumers’ association in its presentation and the subsequent cross-examinations back in late August when the committee was hearing presentations. It’s fairly straightforward. The amendment essentially would require that the energy board, in its decisions as to the awarding of costs, treat informal processes as they treat formal process.

Mrs Johns: I missed that. They would treat the informal process as — I’m sorry?

Mr Conway: Let me just read the language: “Subsections (1) to (5) also apply, with necessary modifications, in respect of any formal or informal process that is not a proceeding but through which the board performs its functions....”

Remember what the consumers’ association said, that they wanted, recognizing all of the issues — was it Anne who was here earlier? Yes, I think you were making reference to this. The intention of this is to capture the advice tendered by the consumers’ association to make sure that, in the awarding of costs, it wasn’t just a matter of awarding costs through the formal proceedings but that the awarding of costs should also be available in any of the informal proceedings that may develop or are already the case.

I’m no expert at how the board operates but I thought it was a good point that the consumers’ association made, simply to recognize that in the awarding of costs there be no real difference and that the board should not be prevented from awarding costs in informal proceedings, should the board decide to do so, at the board’s discretion.

Again, it’s just an effort to make it more —

Mrs Johns: If I could ask the ministry a question on this, Anne, could you tell us, with Bill 35 the way it is, without this amendment, can the Ontario Energy Board award costs in an informal process?

Ms Powell: Yes. The board in the past has awarded costs to both formal and informal hearings. They’ve looked at the word “proceeding” and interpreted it in a broad sense. Sometimes they do provide it for an informal hearing and sometimes they do not. Examples of where they have provided this is that they have indicated to the utility for consultations relating to externalities or consultations relating to their demand-supply management programs to provide funding. That’s one area where the board has used that.

Mr Conway: I appreciate that, but I paid particular attention to what the CAC said to us. They were rightly concerned about the new scheme and the tremendous number of items that are going to be coming to and from the board. Many of them I think we all feel should be done as informally as possible, because it’s got to be user-friendly. It’s hopefully going to be consumer-friendly, and by that we mean individual consumers as well as big, corporate consumers. The CAC made a point in requesting this amendment, and I thought it was something we would want to do.

If it’s being done, great. Let’s just make it clear in the statute that that’s what we expect the board will continue to do, recognizing that there will be, potentially, an exponential growth in the kinds of informal proceedings and decision-making that this board’s going to have to make and engage in on a daily, weekly basis. An effort to make it consumer-friendly — that is the process, I should say.

Mrs Johns: I just need to ask legal counsel, having heard that explanation, is there some concern with this section from this side?

Mr Lawrence Fox: I think the matters at the board under the statute would be proceedings, the various applications that we have and other matters. The language is a bit unclear to me, in terms of what a formal or informal process is.

Mr Conway: I’m quite happy to try to deal with that. But remember the discussions. I don’t know whether you were here for them, but certainly the people from the energy board and the people from the consumers’ association and the public interest advocacy group in Ottawa were talking about the way this is going to work. If it works well, there’s got to be a very substantial reliance on informal proceedings. That seems to make a lot of sense to me. This is a new scheme. This is a very different world than the one we are leaving behind. I just thought the consumers’ association made a very good point.

Also, I have some concern about this business about intervenor funding. We’re not going to have intervenor funding. The member for Huron made a good point this morning about, “Let’s put our faith in the ability of the board to award costs.” All right. But if a growing amount of the activity of the board is going to be in these informal proceedings and we don’t allow the board to at least consider the awarding of costs in that part of its activity, then it seems to me we are potentially disadvantaging regular folks and consumers.

Mrs Johns: That’s not what I heard said over here. I heard said from the Ministry of Energy, Science and Technology that the board, with its capacities now, could award costs at their discretion, both in a formal and an informal hearing. Am I correct?

Ms Powell: That’s correct. They have done that in the past and I would expect that under the new legislation, which is the same as what was there before, they would continue to do that. It would still be at their discretion whether these costs would or would not be awarded.

Mrs Johns: OK. Because I am very concerned here. I want there to be an ability for the board to assess costs or give costs, but on the other side I want to leave it to the discretion of the board. Not everybody should get costs. I think Mr Conway and I are saying the same thing. So you’re telling me here that without this section we have in place in Bill 35 an ability for the Ontario Energy Board to award costs in a formal or an informal hearing, and that you do not believe I need this amendment to be able to ensure that that happens?

Ms Powell: That’s correct, because the board has interpreted “proceeding” in a broad sense before, and I would think it would continue to do so in the future.

Mrs Johns: Could I ask that you call this group and talk to them about this tomorrow?

Mr Conway: Let me just read the brief. This is the consumers' association brief:

"Section 29 of the OEB Act grants the board power to award costs to any participant in a 'proceeding.' This is a restatement of the power which the board has in its existing legislation. The board has recently broadened its interpretation of 'proceeding' to include any process commenced by it. There remains, however, a real question as to whether the board can award costs when it is, for example, assisting the government in drafting regulations. The board will be undertaking a number of informal, non-hearing processes to develop, for example, a generic set of conditions that will apply to the licences it is required to issue to distributors and retailers of electricity. It is equally clear that the government will be asking the board to take a lead in drafting the many regulations which will define the content of the new regulatory and market structures. The board has already issued an invitation to interested parties to make submissions to it on the conditions which should be attached to licences. The board's existing powers to award costs might mean that, for example, stakeholders representing the interests of residential consumers would receive no costs to participate in the informal processes, with the result that they would not be able to participate effectively. By contrast, however, those interests with a financial stake in the outcome of the restructuring would be able to participate fully. What is required, in CAC's view, is an amendment to the legislation to make the board's power to award costs both broader and more flexible. Section 29 of this act should be amended to broaden the meaning of the word 'proceeding' to include any process, whether formal or informal, generic or specific, by which the board carries out the obligations assigned to it under the Electricity Act or the Ontario Energy Board Act."

That was the specific concern. It seemed to me a pretty straightforward concern and I'd like someone from the panel to speak to it directly.

1550

Ms Powell: The Consumers' Association of Canada have made that statement in the brief. I've discussed this matter with them and I believe the minister has had correspondence with them. It's our belief that it's in the discretion of the board to award costs. You noted the consultation for the gas marketers' licence. It was in the discretion of the board to award costs for that particular exercise and the board elected not to.

Mr Conway: But my concern here is that everything we know about what we're proceeding into is that there is going to be a pile of work and proceedings and activities that are going to dwarf a lot of what these people would ever have had to consider before. The point of the amendment is to try to provide some reasonable certainty to average folks that they are not going to be intentionally or unintentionally marginalized by their inability to participate in a number of these.

I'd forgotten actually that, for example, there are going to be — invitations have already been extended for stakeholder groups to come to the table with their ideas as to how certain structures should be established, how certain regulations should be written. That's going to be potentially a real issue for some people. It will not be an issue for everybody, but some people are going to be much more able to cope with that, including paying for that, than others. That's essentially why this amendment is here.

The consumers' association does this stuff; I don't. I thought they were good witnesses. I thought they made a good point. They articulated it very clearly. I don't think this is a particularly radical proposition. The language — well, enough said.

Mrs Johns: I think I'm getting a clearer picture here, with some help from some people around me. This is the first time we've seen costs trying to be awarded for things that are not hearings. In this amendment they are saying that even if this is not a proceeding, the board could award costs. Are we talking about any time the board wants to consult with anybody, the board would have to consider whether they would award costs? For example, if the stakeholders are coming into a meeting because they want to get their licensing rights, because they care where their licensing is in the future, is this amendment saying that the board could award costs to those people for giving them the best advice to get them set up in their licences?

Ms Powell: Quite frequently when parties participate in matters before the board, which could be interpreted as proceedings, they request costs to participate, and the board uses its discretion and decides on whether costs should be awarded for that particular situation. It may be a bit broad to say every meeting, but it is true in the new legislation that we will have more informal consultations than perhaps in the past, but these have occurred in the past and the board has used its discretion on which ones should receive funding.

Mr Conway: Section 29(1), Helen, is very clear: "The costs of and incidental to any proceeding before the board are in its discretion...." The board's got to have that discretion. It's clearly not an automatic entitlement. I would fully expect that in many cases the board would say no, and hopefully in a lot of cases there wouldn't be any expectation that there would be any awarding of costs, but there are going to be cases in this new world order where there are going to be informal proceedings of an important and complicated kind. They're not necessarily formal proceedings. They might very well fall outside the —

Mr Fox: Can I jump in for a second?

Mr Conway: Don't be shy. Jump in.

Mr Fox: In the case of tribunals, the notion of costs goes to usually one party being told or ordered to pay another party's costs. It's not a question of the tribunal giving its money to a participant. So the notion we have here is one where one party or another is being in a sense compensated for its participation. In courts the way that usually works is that when you win a case, some portion of your expense or your lawyer's fee is paid. So it assumes a process in which there is, shall we say generally,

if not more than generally, two or more parties trying to make a case before, in this case, the board, and the board has to decide.

What's interesting here is that this board, in subsection (5), "is not limited to the considerations that govern awards." That's a special sort of provision that's unique. It's designed to encourage participation in proceedings. You see that in very few cases. It's for the energy board, the Consolidated Hearings Act and the Environmental Assessment Board.

I've digressed a bit but I just want to set out some context here for the discussion. Costs generally mean there are players before the board, and you're telling one player or another, "You pay his costs in part." Applying these principles to an informal process of consultation where people are invited to, let's say, advise on a policy, it seems to me as a lawyer, is somewhat different.

The consumers' association may be concerned about empowering people to come forward to make submissions about what you call the brave new world should look like in a certain area. That's almost like participating in a legislative process or a policy-making process. It's somewhat different, in my lawyer's mind, when costs are used in tribunals.

Mr Conway: I don't want to take too much time on this. I thought the consumers' association people made a good point. They intervene routinely in these matters; I don't. I've been to the board. My experience with these tribunals is virtually the same in all cases over many years, that it is a college of cardinals. These are very specialized proceedings that lay people are not generally found at, with some exceptions. It's a real brotherhood and sorority of specialists, with specialized information and significant resources required to play the game.

Part of me would say I'm not going to worry about this, because I would say to plain folks in the streets, "Go to the street. Don't waste your time because you'll go broke." But I do get annoyed and a lot of citizens get annoyed when they see big corporations, including governments — for example, in this proceeding one could argue, and I'm not going to argue but one could argue, that the Ontario government has very substantial resources. I don't know what the payroll is of the Ministry of Finance or the Ministry of Energy, but they have a lot of very good, bright people. But at the end of the day, the taxpayers will pay for millions of dollars of outside advice from a lot of very bright, high-powered, high-cost specialists from New York and London and San Francisco and a lot of other places. It is going to be the view of the client, the government of Ontario, that a lot of very specialized information is required.

It's beyond the in-house time or ability of the Ministry of Finance. I understand that. That doesn't surprise me. That's what I would expect the government to do, and I expect other players will do the same. It's just the folks in the middle. Where do they fit into this? By grace and favour, subsection (5) may cover it, you tell me. Well, maybe you're right. It will be judged by results.

1600

One of the reasons we got into that intervenor funding boondoggle of the 1980s was that so many of these proceedings, particularly on energy matters, Hydro matters, just became a joke. Farmers were looking at these proceedings and seeing that you didn't even get to play the game without hiring your specialist from Toronto or London, some law firm, and there was a lot of upset about that. Now we're heading into a situation where there are going to be — the more I think about what this is going to mean, the more fascinated I am about the combinations and permutations and possibilities.

All of this to date is just academic for most people, but when this thing actually starts to happen I think there will be a lot of interest. I would like to believe that when the network goes live, when people actually start — it's like the assessment stuff. We talked about it for a year and now it's live and on television. Now people understand, some very positively, some less so. When this stuff starts to happen in your neighbourhood, I think there are going to be a lot of businesses and farmers and just plain folks who are going to be very interested and might very well want to intervene. I want to make sure that the proceedings of the board are as user-friendly as we can make them. Enough said.

Mrs Johns: I'm interested in this argument. I am not going to sign a blank cheque for the government so that it is putting out dollars that we don't know what they are. What I would like to have happen here is I'd like you to get in touch with the association tomorrow, send a notice to Mr Conway and myself with respect to this, and see, if it doesn't meet their needs, if there is something we can do in regulations.

It is certainly our intention to ensure that people have the ability to come before the board and that the board has some discretion to be able to award costs, so a legal opinion, a discussion with the group. We'll move on and we'll see what we can do. If I have missed this and it's not handled properly, we'll have to come back and talk about that through some other method.

Mr Conway: I just want the committee to know I communicated with the CAC after their presentation. I was struck by it and I wanted to be sure that I didn't misunderstand it. They seemed to be quite comfortable with this kind of an amendment. They're not unmindful of some of the things you've said about the past. Their concern is the new scheme is going to be a much more complicated, expansive and potentially costly operation. The hope is that we have a real good development of the informal proceedings to speed things along. Both Mr Laughren and various of the consumer groups said that was their hope. That's the only way this thing is ever going to be made workable.

Mr Fox: If it's a proceeding, it's within subsection 29(5). Anne spoke to this. If the board takes, within the statute, a liberal reading of what "proceeding" means, it's covered.

The Chair: Further comments or questions to this amendment? Seeing none, I put the question. Shall this

amendment carry? All those in favour? Opposed? This amendment is lost.

We now have an NDP amendment on page 144.

Mr Lessard: I move that section 29 of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by adding the following subsection:

"Guiding principle

"(6) In awarding costs, the board shall ensure that members of the public are not prevented from bringing issues of public importance before the board."

This really is the NDP take on the submission that was made by the consumers' association on the same issue we've just been speaking about. The remarks I make on this section are basically a repetition of what I said this morning with respect to the possibility of intervenor funding. Although it doesn't need to be intervenor funding, and I understand the government's position on intervenor funding, there needs to be some assurance, I believe, that residential consumers and farm customers feel they have some real way of dealing with that inequity of bargaining power in a market-based system to ensure that the public interest is protected and that when they're swimming in the shark-infested waters, the objective of lower price is one that is going to be met for everyone similarly.

This is an attempt as well to make the proceedings before the energy board consumer-friendly and, as the consumers' association brief says, to have a process that's broader and more flexible. We as well don't want to see consumers left out of the process. Although I understand that the board has discretion to award costs, I believe this provides further clarification to the board in awarding those costs so that the public doesn't perceive there's any discouragement from bringing matters of public importance before the board as a result of the exercise of that discretion to award costs. If you don't like the Liberal take on the consumers' association brief, maybe you'll like this one a little bit more.

Mrs Johns: I actually like it less. I was more taken with the argument from the Liberals than from this one, to be quite frank. My problem here —

Mr Lessard: It's the same argument that applies.

Mrs Johns: No, it isn't the same argument that can apply, actually. My problem here is this implies that the Ontario Energy Board might, if we don't put this in, be trying to prevent the public from bringing public interest issues before the board. It is the Ontario Energy Board mandate objective to protect the interests of consumers. How could they possibly be trying to prevent the public from bringing issues before the board?

If we have to put this in, we've got something very fundamentally wrong with the bill, because in section 1 of the Ontario Energy Board Act, paragraph 3, the broad objectives of the Ontario Energy Board are "to protect the interests of consumers with respect to prices and reliability of the quality of electricity service," those kind of issues. I just don't see a reason for this.

The Ontario Energy Board is not to be an Ombudsman, but it certainly has a mandate to do a job. I don't think they should be out there beating the bushes to ensure that

the public interest is served, but on the other side, when the public comes forward they have the responsibility to hear from the board. People can write letters, they can come into proceedings, they can do a number of different things.

I actually take a little bit of offence to this one. I think Mr Laughren has said quite clearly that he views as his mandate protection of the consumer.

Mr Lessard: I don't think I was implying that the energy board should be beating the bushes to get people to make appearances before them. I think this is just a matter of perception, so that people who do feel they want to bring matters of public importance before the board don't feel they are intimidated by the prospect of having costs awarded from them and not bring those issues before the board. That's the only point we're trying to make here.

Mr Conway: The other thing I will say here too, and where I might even differ with the consumers' association, is that the politics of electricity in a jurisdiction like this are so powerful and so pervasive that there is always the recourse to beat the — I won't say what — out of the politicians in the Legislature, and it will happen. There's just no way that's not going to be a possibility. In fact you might argue, I say to my friend from Windsor, that it might be your cheapest and most efficient, least costly route.

Laughter.

Mr Conway: I'm deadly serious. You've got to get people's attention. The regulated market has had its share of problems but one of the things that it has meant is that certain of the — some kind soul gave me a Scottish newspaper, a staff member of the Legislative Assembly. I was just reading this stuff. The headlines are just everywhere about all kinds of stuff that we haven't seen in this province for 50 years. We are going to start to see it. There will be a very rich opportunity to appeal to members of the assembly, whether they want to be appealed to or not, in a very cheap, easy and regular way. I suspect that will provide some real measure of protection, so-called. We shouldn't lose sight of that.

1610

The Chair: Further questions and comments? Seeing none, shall this amendment carry? All those in favour? Opposed? The amendment is lost.

Shall section 29 carry? All those in favour of this section? Opposed? This section carries.

Section 30: We have a government amendment on page 145.

Mrs Johns: I move that section 30 of the Ontario Energy Board Act, 1998, as set out in schedule B to the bill, be struck out and the following substituted:

"Power to review, etc.

"30(1) In addition to its powers under section 21.2 of the Statutory Powers Procedure Act, the board may at any time rehear or review any matter before deciding it.

"Review by director

"(2) Despite subsection 49(4) and section 63, the director may review all or part of his or her decision and

section 21.2 of the Statutory Powers Procedure Act applies, with necessary modifications, to the review."

We added the first part of subsection (1) because we felt that we needed to incorporate the part about section 21.2 of the Statutory Powers Procedure Act. We're trying to outline under what conditions the board is able to review decisions in both of these cases. We wanted to clarify that.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further questions or comments to section 30? Shall section 30, as amended, carry? All those in favour? Opposed? This section carries.

Section 31 of schedule B, section 32 and section 33 have no amendments proposed. Any questions or comments to those three sections? Seeing none, shall sections 31, 32 and 33 carry? All in favour? Opposed? Those three sections carry.

Section 34: a government amendment, page 146.

Mrs Johns: I move that section 34 of the Ontario Energy Board Act, 1998, as set out in schedule B to the bill, be amended by striking out "Lieutenant Governor in Council" and substituting "Minister".

What we're doing here is reflecting the current practices, what happens when the board is asked to consult with stakeholders and report back on stakeholder positions.

Mr Conway: I think this is a really radical measure that should give us all great pause. It's going well beyond the pale of reason. Taking all this power away from the cabinet and giving it to the minister? I'm only kidding. Let's move on.

The Chair: Further comment? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion on section 34? Shall section 34, as amended, carry? All those in favour? Opposed? This section carries.

New section, 34.1: This is a Liberal amendment, page 147.

Mr Conway: I move that part II of the Ontario Energy Board Act, 1998, as set out in schedule B of the bill, be amended by adding the following sections:

"Energy conservation measures

"34.1(1) The board has power to undertake energy conservation measures as it considers appropriate.

"Examples

"(2) Examples of energy conservation measures are:

"1. The imposition of a systems benefit charge.

"2. The establishment of a renewable portfolio standard.

"Hearing, fund for reactor decommissioning and radioactive waste management

"34.2 The board shall hold a hearing into the possibility of establishing a special fund to finance the cost of decommissioning nuclear reactors and managing radioactive waste, shall prepare a report on the hearing, in-

cluding recommendations, and shall make the report public."

We had several submissions from people like the Green Energy Coalition, Pollution Probe, Citizens for Renewable Energy, the Ontario Medical Association, the Canadian Energy Efficiency Alliance, the Sierra Club and the Nuclear Awareness Project, to name seven or eight, all of which strongly recommended the importance of providing a mechanism in this new policy and the legislation which would deliver it. The creation of energy conservation measures, those people felt, in the broad public interest, would be very important; important, in a sense too, to ameliorate what they all recommended might be the nasty environmental consequences of a pure market.

We heard, I thought, some very powerful testimony. I thought the Ontario Medical Association was particularly strong at Mississauga in pointing out that this is a policy that essentially assumes the market is going to make key decisions. I don't have a problem with that so long as there are reasonable constraints on the behaviour of all markets to create nasty or unintended consequences. We're already seeing the concerns that are brought in the land about what an energy market might do if its first, second and third concerns were only price.

There will be choices made that are going to be not in the public interest where the environment is concerned. In the old scheme of things, it was a matter of a state-controlled monopoly, and there were opportunities, not just in Ontario but in most of the North American jurisdictions where Ontario-Hydro-like operations were certainly the monopoly supplier. There was a much easier way to mandate certain behaviours. If the government was concerned about scrubbers, they just ordered Ontario Hydro to install scrubbers. In fact, one of the strong cases for the whole nuclear commitment was an environmental one. It didn't involve the degradation that you get with other kinds of electricity generation. That was part of the case for atomic power back in the 1960s.

The question is, then, where in this new deregulated marketplace are we going to get the mandates that are actually going to produce things like the renewable portfolio standard, any kind of energy conservation measure that individual players in their own circumstance are not likely to develop?

This amendment, the first part, 34.1, is a straightforward amendment to reflect the testimony of many, many people that we should provide a mechanism to permit this undertaking. Generally, as I reviewed the advice, people weren't unanimous on this, but one looks for a place to actually assign the responsibility. When I looked at the testimony and looked at the various possibilities, I felt that this would be the most appropriate place to install that responsibility. It's in that spirit, and on the basis of the very strong evidence that we had in this respect from a lot of individuals and groups, that I developed and placed the motion this afternoon.

1620

Mr Galt: There are quite a few things in this particular suggestion being brought forward by Mr Conway, looking

at promotion of energy efficiencies through a systems benefit charge. Certainly, as you look at something like this, there's a risk of the possibility of the price actually increasing by setting up dear knows what to administer this. Some sort of bureaucracy would probably be necessary to oversee it. Dear knows, we could end up subsidizing some uneconomic forums of electricity supply.

He moves on into looking at "a renewable portfolio standard." I think Bill 35 is already proposing very effectively that it will create a level playing field and open access, which should be very helpful. It's enabling legislation that will help to control emissions. There are also enabling regulations to ensure that emissions disclosure will be there on retailers' bills when they receive them so they'll know what kind of emissions they're responsible for.

In section 34.2, I'm certainly sympathetic to the concern relating to nuclear reactors. He's absolutely right that we did hear a lot of concern being expressed about that, but in fact that is a federal jurisdiction. It's my understanding that guidelines for financial assurance will be coming from the AECB sometime this fall. So in that area, it would be duplication, and it is an area of federal jurisdiction.

Mr Conway: The member makes a good point. There is federal jurisdiction involved with the regulation of our atomic reactors, but what is clearly a provincial responsibility is the payment of the downstream, decommissioning and waste management costs. Again, I noted that the Financial Post — I guess it was yesterday; I can't remember if it was yesterday or today — quotes a senior Hydro official as saying that their best latest estimate is about \$15.7 billion of downstream costs. That is an important issue. The federal government is the regulator, but the Ontario taxpayer is the payer of that.

Again, a concern I have, on the basis of what I saw last year and what I continue to hear from inside and outside Ontario Hydro Nuclear, is about trying to get some transparency, some clarity as to what it really is, what its constituent parts are and how that is likely to affect rates in the short and intermediate terms.

On the main point, Mr Galt makes the point that we really have to be careful about imposing any strictures or constraints that might in fact increase costs. That is going to be something we're going to have to recognize, because if you recall those deputants — and I'll just focus on the medical association — you're going to have a choice to make. There is absolutely no question that there will be real market pressures in the short and intermediate term to offer up cheap, dirty power. In some cases, there will be some very real opportunities to give to one group of people attractive, environmentally benign power with a lot of very nasty environmental degradation found hundreds of miles away, perhaps thousands of kilometres away.

We won't have time to deal with it in these proceedings, but I was struck the other day by actions taken in Washington with respect to new caps that the US federal energy commission is apparently going to be applying to the generators of electricity. I didn't bring the news arti-

cles that were in the Toronto, Canadian and American press as to what the implications of that most recent action in Washington will mean, particularly to Ontario Hydro. As I read the articles, it appeared that we would be required, as a utility — now I'm talking about Ontario Hydro — to expend hundreds of millions of dollars to bring our fossil plants to the new requirements of the latest — I don't know whether they were amendments to the Clean Air Act. I can't remember.

There's every indication that not just our own governments but not very far-distant foreign governments are going to be establishing caps and rules and regulations that are clearly going to be imposing some costs in the name of environmental protection. I come back to the point that a lot of those people I mentioned earlier — the medical association, Citizens for Renewable Energy, the Canadian Energy Efficiency Alliance — told us that in a pure market, particularly in the current situation, there's going to be enormous pressure to accept a lot of dirty, coal-fired electricity, which will be cheap, cheaper, than a number of the alternatives.

The point of this amendment is to give the energy board the option, the opportunity, to take some reasonable, modest steps to develop certain energy conservation measures, like the establishment of a renewable portfolio standard. I don't think there's any reason to believe that, without some of that kind of direction, this market, in the short and intermediate term, is going to deliver those kinds of possibilities. What it will do, on the basis of the evidence I heard, is create some very strong market pressures to pollute in ways that I think will trouble a lot of our constituents.

Mr Galt: If I may respond, there have been several comments made that I think are important to respond to. I'm certainly empathetic to his concern about how clean those little electrons are going to be, at least the production of those little electrons. I should remind the member that Ontario Hydro, as it is — and we're keeping it there as Genco, one unit — is the second-cleanest in the north-east of North America, in total. I would suggest that probably on a per-kilowatt hour it is the cleanest, as it relates to emissions.

There have been many things that this government has been doing to ensure that the emissions are as low as possible. If we had broken it up and had competition between the nuclear plants and the fossil fuel plants, I could see real concerns that we might have. There's no question that we're committed in regulation. These are going to be very difficult regulations to write, to ensure that the companies we buy power from are going to be every bit as clean as Ontario Hydro.

The Acting Chair (Mr Toby Barrett): Mr Galt, excuse me for interrupting. It's my duty to read a statement. I think this committee knows about this.

Mr Galt: I was just getting fired up here.

1630

The Acting Chair: I apologize, Mr Galt.

Pursuant to the order of the House dated June 24, 1998, as it is now 4:30 on the fifth day of clause-by-clause

consideration, those amendments which have not yet been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto.

We are presently at the Liberal amendment 34.1. This is on page 147 and has been moved. Does this amendment carry? Opposed? Lost.

Continuing with schedule B, section 35: As I understand it, in keeping with the tradition of this committee, we would collapse several sections. We would collapse sections 35 through 41, including all sections within that collection of sections.

Section 34: One amendment was lost and we haven't passed it as amended. I believe there's a motion that's missing. I see no amendments on the list. I'll repeat the list, Mr. Galt. Shall sections 35 through 41 carry? Carried.

We now come to section 42. Shall the government amendment as described on page 148 carry? Carried.

Shall section 42 of schedule B, as amended, carry? Carried.

Continuing in section B, I see on page 150 an amendment to section 43. Shall this amendment carry? Carried.

Shall section 43 of schedule B, as amended, carry? Carried.

Section 44: There's an amendment on page 151. Shall this amendment carry? Carried. Shall section 44 of schedule B, as amended, carry? Carried.

Again in keeping with the tradition, I wish to collapse sections 45 through 55 and include all sections therein. Shall sections 45 through 55 carry? Carried.

With respect to section 56, there is an amendment on page 152, a government motion. Shall the government amendment to section 56 carry? Carried.

Shall the Liberal amendment on page 153 to section 56 carry? No? Lost.

Shall the NDP motion described on page 154, an amendment to section 56, carry? Defeated.

Shall section 56 of section B, as amended, carry? Carried.

Shall section 57 of schedule B carry? Carried.

A government amendment on page 155. Shall this amendment carry? Carried.

Shall section 58 of schedule B, as amended, carry? Carried.

I wish to collapse several subsequent amendments. Shall sections 59 through 64 carry? Carried.

With respect to section 65, there's an NDP amendment on page 156. Shall this NDP amendment carry? Defeated.

Hearing that, shall section 65 of schedule B, as amended, carry?

Interjections.

The Acting Chair: Yes. It is now not amended, based on that vote. Therefore, shall section 65 carry? Carried.

Collapsing several sections, shall sections 66 through 68 carry? Carried.

Section 69, a government amendment on page 157. Shall this amendment to section 69 carry? Carried.

Shall section 69 of schedule B, as amended, carry? Carried.

Section 70, a government amendment on page 159. Shall this amendment carry? Carried.

Shall section 70 of schedule B, as amended, carry? Carried.

Shall section 71 of schedule B carry? Carried.

Section 72: There is a government amendment on page 160. Shall this amendment carry? Carried.

I wish to declare the amendment on page 162 out of order.

Next is an NDP amendment. Shall the NDP amendment to section 72, on page 164, carry? No.

Just as a point of clarification, the Liberal amendment on page 163 is a point of information. It's not an amendment.

Shall section 72 of schedule B, as amended, carry? Carried.

I wish to collapse sections 73 through to and including 76. Shall these sections carry? Carried.

On page 165 there is an NDP amendment to section 77. Shall this amendment carry? Lost.

Shall section 77 of schedule B carry? Carried.

On page 166 we have an NDP amendment to section 78. Shall this amendment carry? Defeated.

Shall section 78 of schedule B carry? Carried.

Section 79, a government amendment on page 167. Shall this amendment carry? Carried.

Shall section 79 of schedule B, as amended, carry? Carried.

Section 80: On page 168 there's a government amendment. Shall this amendment carry? Carried.

Shall section 80 of schedule B, as amended, carry? Carried.

Section 81: On page 169 there is a government amendment. Shall this amendment carry? I declare that carried.

On page 170 there is an NDP amendment to section 81. Does this amendment carry? Lost.

Shall section 81 of schedule B, with that amendment, carry? Carried.

1640

I wish to collapse sections 82 through 84. Shall sections 82 through 84 carry? Carried.

Continuing with schedule B, section 85: On page 171 there is a government amendment. Shall this amendment carry? Carried.

On page 173 there is an NDP amendment. Shall this amendment carry? I declare that amendment defeated.

Shall section 85 of schedule B, as amended, carry? Carried.

Shall section 86 of schedule B carry? Carried.

Section 87: On page 174 there's an NDP amendment. Shall this amendment carry? I declare that amendment lost.

Page 175, a government amendment to section 87. Shall that carry? I declare it carried.

Page 176, shall the NDP amendment carry? Lost.

Page 177 is out of order.

On page 178 there is an NDP amendment. Shall this amendment carry? Lost.

The NDP amendment on page 179 is also declared out of order.

Shall section 87 of schedule B, as amended, carry? Carried.

I wish to collapse sections 88 through 97. Shall these sections as grouped together carry? Carried.

On page 180 there is a government amendment to section 98. Shall this amendment carry? Carried.

Shall section 98 of schedule B, as amended, carry? Carried.

I wish to collapse together sections 99 and 100. Shall these sections as grouped together carry? Carried.

On page 181 there is a government amendment to section 101. Shall this amendment carry? Carried.

Shall section 101 of schedule B, as amended, carry? Carried.

On page 182, shall the government amendment to section 102 carry? Carried.

Shall section 102 of schedule B, as amended, carry? Carried.

Shall section 103 through to and including section 105 carry? Carried.

On page 183, shall the government amendment to section 106 carry? Carried.

Shall section 106 of schedule B, as amended, carry? Carried.

On page 184, shall the government amendment to section 107 carry? Carried.

Shall section 107 of schedule B, as amended, carry? Carried.

Shall section 108 of schedule B carry? Carried.

On page 187, shall the government amendment to section 109 carry?

Shall section 109 of schedule B, as amended, carry? Carried.

Shall sections 110 through 121 carry? Carried.

Shall the government amendment on page 188 to section 122 carry? Carried.

Shall section 122 of schedule B, as amended, carry? Carried.

Shall sections 123 and 124 carry? Carried.

Shall the government amendment on page 190 to clause 125 carry? Carried.

Shall clause 125 of schedule B, as amended, carry? Carried.

Shall the government amendment on page 191, referring to section 126, carry? Carried.

Shall the NDP amendment on page 192, an amendment to section 126, carry? I declare that lost.

Shall section 126 of schedule B, including that amendment, carry? Carried.

Shall section 127 of schedule B carry? Carried.

Shall the government amendment to section 128, on page 193, carry? Carried.

Shall section 128 of schedule B, as amended, carry? Carried.

Shall sections 129 through 132 carry? Carried.

This completes schedule B. Shall schedule B in its totality, as amended, carry? Carried.

We go on to schedule C. Shall the government amendment to section 1 of schedule C on page 194 carry? Carried.

Shall the government amendment to section 1 on page 195 carry? Carried.

Shall section 1 of schedule C, as amended, carry? Carried.

Shall sections 2 through 6 carry? Carried.

Shall schedule C, as amended, carry? Carried.

With respect to schedule D, shall the government amendment to section 1 on page 196 carry? Carried.

Shall the government amendment on page 197 carry? Carried.

Shall section 1 of schedule D, as amended, carry? Carried.

Shall sections 2 through 4 carry? Carried.

Shall the government amendment on page 198, referring to section 5, carry? Carried.

Shall section 5 of schedule D, as amended, carry? Carried.

Shall the government amendment to section 6 on page 199 carry? Carried.

Shall the government amendment to section 6 on page 200 carry? Carried.

Shall section 6 of schedule D, as amended, carry? Carried.

On page 201, shall the government amendment to section 7 carry? Carried.

Shall section 7 of schedule D, as amended, carry? Carried.

Shall sections 8 and 9 carry? Carried.

On page 202 there is an NDP amendment to section 10. Shall this amendment carry? I declare that lost.

Shall section 10 of schedule D carry? Carried.

1650

Shall sections 11 and 12 carry? Carried.

Shall the government amendment to section 13 on page 203 carry? Carried.

Shall section 13 of schedule D, as amended, carry? Carried.

I wish to collapse sections 14 through 21. Shall these sections carry? Carried.

Shall the government amendment to section 22 on page 204 carry? Carried.

Shall section 22 of schedule D, as amended, carry? Carried.

Shall sections 23 through 26 carry? Carried.

On page 205, shall the government amendment to section 27 carry? Carried.

On page 206, shall the government amendment to section 27 carry? Carried.

Shall section 27 of schedule D, as amended, carry? Carried.

On page 207, shall the Liberal amendment to section 28 of schedule D carry? I declare that amendment lost.

Shall section 28 of schedule D carry? Carried.

Shall sections 29 and 30 carry? Carried.

On page 208, shall the government amendment to section 31 carry? Carried.

Shall section 31 of schedule D, as amended, carry? Carried.

On page 209, shall the government amendment to section 32 carry? Carried.

On page 210, shall the government amendment to section 32 carry? Carried.

On page 211, shall the government amendment to section 32 carry? Carried.

Shall section 32 of schedule D, as amended, carry? Carried.

Shall section 33 carry? Carried.

On page 212, shall the government amendment to section 34 carry? Carried.

Shall section 34 of schedule D, as amended, carry? Carried.

Shall sections 35 and 36 carry? Carried.

On page 213, shall the government amendment to section 37 carry? Carried.

On page 214, shall the government amendment to section 37 carry? Carried.

On page 215, shall the government amendment to section 37 carry? Carried.

Shall section 37 of schedule D, as amended, carry? Carried.

On page 216, shall the government amendment to section 38 carry? Carried.

Shall section 38 of schedule D, as amended, carry? Carried.

On page 217, shall the government amendment to section 39 carry? Carried.

On page 218, shall the government amendment to section 39 carry? Carried.

Shall section 39 of schedule D, as amended, carry?

Shall the government amendment on page 219, referring to section 40, carry? Carried.

Shall section 40 of schedule D, as amended, carry? Carried.

On page 220, shall the government amendment to section 41 carry? Carried.

Shall section 41 of schedule D, as amended, carry? Carried.

On page 221, shall the government amendment to section 42 carry? Carried.

On page 222, shall the government amendment to section 42 carry? Carried.

Shall section 42 of schedule D, as amended, carry? Carried.

Again, in keeping with tradition, I wish to collapse sections 43 through 52. Shall these sections carry? Carried.

Shall schedule D, as amended, carry? Carried.

Shall the long title carry?

Ms Churley: I want to put something on the record, but I can wait until you've gone through the motion.

The Acting Chair: Pursuant to the order of the House dated June 24, there is no debate in clause-by-clause consideration as of 4:30.

Shall the bill as amended carry? Carried.

Shall I or the Chair of this committee report the bill as amended to the House? Agreed.

As ordered: That the Chair report bill 35, as amended, to the House? Agreed.

I declare these deliberations adjourned.

The committee adjourned at 1657.

CONTENTS

Thursday 8 October 1998

Energy Competition Act, 1998, Bill 35, *Mr Wilson* /

Loi de 1998 sur la concurrence dans le secteur de l'énergie,

projet de loi 35, *M. Wilson* R-499

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr Ted Arnott (Wellington PC)

Mr John R. Baird (Nepean PC)

Mr Toby Barrett (Norfolk PC)

Ms Marilyn Churley (Riverdale ND)

Mr Steve Gilchrist (Scarborough East / -Est PC)

Mrs Helen Johns (Huron PC)

Mr Wayne Lessard (Windsor-Riverside ND)

Mr Wayne Wettlaufer (Kitchener PC)

Also taking part / Autres participantes et participants

Ms Cynthia Brandon, counsel, legal services branch,

Ministry of Energy, Science and Technology

Mr Les Horswill, ADM, policy division,

Ministry of Energy, Science and Technology

Ms Anne Powell, manager, oil and gas section,

Ministry of Energy, Science and Technology

Clerk / Greffière

Ms Donna Bryce

Staff / Personnel

Mr Doug Beccroft, legislative counsel

CA20N
X093
-576



Ontario
100-1000

R-15

R-15

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Thursday 19 November 1998

Journal des débats (Hansard)

Jeudi 19 novembre 1998

Standing committee on resources development

Highway 407 Act, 1998

Comité permanent du développement des ressources

Loi de 1998 sur l'autoroute 407



Chair: Brenda Elliott
Clerk: Viktor Kaczkowski

Présidente : Brenda Elliott
Greffier : Viktor Kaczkowski

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Thursday 19 November 1998

Jeudi 19 novembre 1998

The committee met at 0905 in committee room 1.

HIGHWAY 407 ACT, 1998

LOI DE 1998 SUR L'AUTOROUTE 407

Consideration of Bill 70, An Act to engage the private sector in improving transportation infrastructure, reducing traffic congestion, creating jobs, and stimulating economic activity through the sale of Highway 407 / Projet de loi 70, Loi visant à intéresser le secteur privé à améliorer l'infrastructure des transports, réduire la circulation engorgée, créer des emplois et stimuler l'activité économique par la vente de l'autoroute 407.

SUBCOMMITTEE REPORT

The Chair (Mrs Brenda Elliott): Good morning, everyone. Welcome to the standing committee on resources development. We're gathered together this morning for the purposes of hearing presentations on Bill 70, the Highway 407 Act.

Our first order of business this morning is to deal with the subcommittee report. You have that before you. Do I have a mover for this report?

Mr John R. Baird (Nepean): So moved.

The Chair: Mr Baird, thank you. Any comments or questions?

Mr Baird: Do you require an amendment?

The Chair: I don't think so.

Mr Baird: With the Wednesday, September 30?

The Chair: No, that was already done.

Mr Baird: OK, sorry. I've got the old one.

The Chair: Further questions or comments? Shall this report be adopted, then?

All those in favour? Opposed? It is adopted.

STATEMENT BY THE MINISTER
AND RESPONSES

The Chair: We now come to the interesting part of the day. Minister, welcome. We're very pleased that you have the time to come before us this morning to begin our presentations. On behalf of all the committee members, I thank you. You may begin. You have 20 minutes for presentation time, and that will be followed by 10 minutes for each of the opposition parties.

Hon Rob Sampson (Minister without Portfolio [Privatization]): Thank you very much, Madam Chair.

I'm used to being set up by the opposition, not by the Chair of subcommittees, but I'll do my best to keep this an interesting day.

I have with me the CEO of the Office of Privatization, Scott Carson, and the vice-president of corporate development, Office of Privatization, handling the 407 file, Jodie Parmar. If there are some technical questions, I may refer them to these gentlemen.

I'm pleased to be here today to lead off the public hearings on Bill 70, An Act to engage the private sector in improving transportation infrastructure, reducing traffic congestion, creating jobs, and stimulating economic activity through the sale of Highway 407. I'd like to focus my presentation this morning, if I could, on why we want to privatize Highway 407 and the process we are following to get there. I'll also address some of the key issues raised by members during the second reading debate on this particular bill, as I was encouraged to do so and I frankly want to.

I'd like to begin my remarks by recognizing and thanking many people in successive governments, believe it or not, for pioneering and building the 407. It has indeed been a long journey.

Planning for the 407 and other 400-series highways began in the 1950s. It's hard to believe, but that's the case. At that time, the 407 was planned to stretch from Milton to Markham. In the 1970s, the Davis government created the Parkway Belt, which included plans for the 407. Construction of the first section, from Highway 410 to the 400, was started in the 1980s under the Peterson government, and in 1993 the Rae government accelerated construction, from the 403 in the west to Markham in the east. So all parties have had a say in this particular infrastructure.

Many notable changes happened over this 40-year period, including the shift from public-sector ownership to private-sector involvement and the use of leading-edge technology in the collection of tolls. As you know, the 407 is an electronic tolled highway.

Tolls are routinely accepted today in many places around the world as a means of financing construction and maintaining the infrastructure. It's worth noting that in 1956, John Robarts chaired a select committee of the Legislature which recommended the use of tolls as a means for governments to build highways. So the discussion on tolls has been around this province for a number of years. However, the concept of privatization in

the construction of Ontario's roadways was first introduced by the NDP government in 1993. However, their highly touted public-private partnership simply didn't work. "Significant financial, ownership and operational risks remained with the province," according to the Provincial Auditor.

Taxpayers financed the project then and taxpayers continue to own and finance the highway today. While I give credit to the NDP government for fast-tracking the construction of the 407 and making congestion relief a priority, I must say that the decision to build the middle section only diminished its value as a true bypass route through the GTA. Joyce Savoline, the chair of the region of Halton, who I understand will be addressing the committee later on today, perhaps this morning, has referred to the absence of the western extension of Highway 407 as "the missing link."

In its present form, Highway 407 is a 69-kilometre roadway through the heart of the GTA, extending from Highway 403 in Oakville to Highway 48 in Markham. As envisaged, the completed highway will be extended another 85 kilometres, 24 kilometres west to Highway 403 and the QEW in the Burlington area and 61 kilometres east to the junction of Highways 35 and 115 in Clarington. As well, two proposed connecting links between the 401 and 407 have been planned in the Durham region.

As a vital link in Ontario's transportation network, the completed highway will play an increasingly important role in continuing the economic prosperity of the GTA and of the province as a whole. The extensions to Highway 407 will give a much-needed boost to our transportation infrastructure by further reducing congestion on the 401 and the QEW, providing a competitive advantage to Ontario's industries and creating over 6,000 new jobs. More importantly, the proposed expansions will stimulate new investment and activity in the 407 corridor, in communities such as Burlington, Brampton, Markham, Oshawa, and the regions of Halton, Peel, York and Durham. I should say to the member from Mississauga, in the community of Mississauga as well.

There is little doubt that Highway 407, even though it's only partially completed, has been well received. The facts speak for themselves. Weekday traffic has virtually doubled this year, from about 107,000 daily toll trips in January to more than 214,000 trips a day in October. Clearly Highway 407 is meeting a real need.

If Highway 407 is such an integral part of the provincial transportation network and is exceeding its traffic and revenue forecasts, then why does the government want to sell it? After all, the government owns and operates every other highway in the province.

Mr Gilles Pouliot (Lake Nipigon): Good question.

Hon Mr Sampson: I intend to answer that question. *Interjection.*

Hon Mr Sampson: You should stop prompting me.

While it's true that Highway 407 does generate significant toll revenues, it's important to remember that taxpayers are also still financing the very substantial debt associated with the construction of Highway 407 central.

In addition, being the owner of the highway requires that taxpayers' dollars be spent on maintenance, expansion and ultimately upgrades to this very highway. Our goal in selling the highway is quite simply to ensure that the extensions to Highway 407 are built in a timely manner by the private sector, at no cost to Ontario taxpayers, and to relieve taxpayers of the construction and the financial risks associated with operating a toll highway.

Private sector ownership of the highway will remove the burden of construction debt and financing charges from the backs of taxpayers of this province, allowing the money to be used to reduce provincial debt, just as we promised to do in the Common Sense Revolution. This will free up resources which can be reinvested in priority areas such as health care, classroom education and community safety.

However, as we have said all along, we will proceed with the sale only if certain conditions are met. For example, the purchaser must agree to build, finance and operate the two extensions and finance the central section. The new owner will be required to start construction of the west and east partial extensions in the spring of 1999.

I want to assure the members of the committee and the public that we will be looking for fair value for this highway, along with a commitment to extend, expand and maintain the highway to the appropriate standards. We are not selling the land beneath the highway; we are only selling the right to run a business of a highway. We will grant a long-term lease so that the new owner can recoup his capital investment in the expansion of the road and its ongoing maintenance.

During second reading debate of the bill, many members asked if the highway would eventually be returned to the crown. The answer is yes.

The process to select a new owner will be conducted in a fair, open and competitive manner. A call for expressions of interest was issued in late October in order to identify and begin communicating with potential bidders. Once expressions of interest are received on November 23, the evaluation teams will conduct a bidder qualification process to assess the financial and technical ability of the bidders to undertake the project. Qualified bidders will be identified and a confidential information memorandum issued to them in early December.

Indicative bids are due in January and final bids are due at the end of February. The province will conditionally select the final bidder and complete negotiations in March 1999, with closing shortly thereafter.

We are committed to ensuring that the entire process to select a buyer is straightforward, fair and free of any conflicts of interest. We want to be 100% sure that all participants are treated equally throughout the process. That is why, through a formal RFP process, we have assembled a team of highly qualified financial, legal and transportation advisers. In addition, we have engaged process consultants who have helped us to establish a rigorous bidding process. Finally, we have put in place an independent process auditor to ensure that everything is done properly and according to prescribed practices we

have established. Let me also emphasize that all those participating in the 407 privatization — advisers, bidders, staff, consultants, and indeed elected officials — are subject to a number of provisions designed to deal with any conflicts of interest.

Let me talk about the bill before you. Bill 70, if passed, would enable the province to sell Highway 407 to a private buyer and would guarantee that construction of the west and east partial extensions can begin next spring. The bill outlines the maintenance and safety obligations for the new owner. All safety and transportation standards which apply to other 400-series highways in Ontario will be applied to the design and construction of the extensions. The new owner must also adhere to Ontario's environmental laws and regulations, obtaining whatever approvals are legally required.

To enable the new owner to bill those drivers who choose not to use transponders, the names and addresses of the users will have to be known. This is no different than your utility company having your name and address in order to bill you for using their services. Access to this information will be subject to the provisions of the Freedom of Information and Protection of Privacy Act. An agreement will be developed between the Ministry of Transportation and the new owner regarding the information necessary to allow the owner to establish customer accounts. We will be introducing an amendment to the bill which will provide that the information being supplied by MTO will be limited to the vehicle owner's name and address.

Finally, I would like to address a few of the issues raised by members during second reading debate on Bill 70.

As the operator of the highway, the new owner will be responsible for establishing toll rates. Obviously it would be in the operator's best interests to keep toll rates low, since drivers will always have the option of driving a free alternate route. Any business person will tell you that if you set your price too high, customers won't use your product. Both the province and the new owner will have an interest in ensuring that Highway 407 is well used, though, and draws traffic from other roadways as it was intended to do. The 407, after all, was designed as a bypass route to alleviate traffic congestion on other routes in the GTA.

Our sale agreement with the new owner will ensure that the 407 carries a minimum level of traffic. Such a traffic threshold will result in congestion relief in the GTA corridor and will be responsive to changes in traffic volumes in the GTA over time. There will also be a direct relationship between this congestion relief measure and the ability of the owner to establish toll levels. This will ensure that the highway remains accessible to everyone.

0920

Members also spoke about the need for a fair, open and transparent process. Let me assure the members again that we recognize our responsibility to balance the public's right to know with the need to protect the integrity of the process and the value of the asset.

As the member for Ottawa Centre, Mr Patten, pointed out during second reading debate on the bill: "We know that these negotiations can't be done in public and I certainly can appreciate that it will be done in private. But there are things that can be shared with the public, such as the criteria by which the RFPs are put out."

I agree with Mr Patten. That is why I would now like to table a summary of the request for expressions of interest that was recently made available to potential bidders. This report provides an overview of the project scope, the bidding process, and the evaluation criteria that will be used to select a buyer.

In closing, let me stress three important features of this undertaking: We want to ensure a timely completion of Highway 407, since it is a significant contributor to Ontario's economic success story; we want to ensure fair value is obtained for Ontario taxpayers; and finally, we have designed a process which is straightforward, fair, open and competitive.

Quite simply, passage of Bill 70 will be good news for Ontario taxpayers, good news for business and industry and good news for GTA motorists.

The Chair: There are a few remaining moments for questions. Were there any questions to be directed to the minister?

Mr Joseph Cordiano (Lawrence): Are we not going to opposition statements and then questions?

The Chair: We'll go straight to opposition statements? All right. Thank you, then, Minister.

Mr Pouliot: On a point of order, Madame — Minister, you will bear with me: I was under the impression that the minister would have an approximate time of 20 minutes and then the official opposition and the third party would therefore have an approximate 10 minutes to respond. But if the minister wishes to entertain a question period of sorts, certainly the third party would have some questions, providing it doesn't deter from our response to the minister's statement. What is your ruling?

Mr Cordiano: We would still want to be assured 10 minutes each.

Mr Baird: I think the subcommittee report gave an opportunity for the minister to make a presentation and for each of the opposition parties to. That was certainly my understanding of the subcommittee report that we adopted unanimously.

The Chair: I only ask because Minister Sampson, when he sat down, indicated that he had staff with him and assistance if there were questions that he couldn't answer. So I assumed from that, rightly or wrongly, that you may have the thought in your mind to entertain questions.

Hon Mr Sampson: Madam Chair, I don't have any difficulties with a brief question period if that's what the member is looking for. I've got nothing to hide here, so I'd be prepared to entertain questions, but I think you have a time limit. I'm in your hands as it relates to your time limit.

The Chair: If we do that, we have time for one very brief question from each opposition party.

Mr Cordiano: That's fine.

The Chair: We'll begin with Mr Cordiano, very briefly.

Mr Cordiano: This is a very important question which I've discovered after careful scrutiny of the bill, and I'm going to be raising this time and again. I'd like to know why it is that the eventual purchaser of Highway 407 will be given an exclusive exemption from paying property taxes when every other business in this province is undergoing the difficulty of the new assessment regime. I cannot understand why you would exempt Highway 407. They're a legitimate business; they'll be operating as a business. Therefore, it makes no sense in the world to me why you would do that.

Hon Mr Sampson: I'd be happy to answer that question. The answer lies, if you look carefully, in the deal structure we're proposing. What we're proposing here is a long-term lease, and the ownership of the land remains with the crown. That's point number one.

Point number two is that we're trying to make sure, as I think is fairer, that the business of running a toll highway competes fairly with its natural competitive business, which is a public highway. As you know, public highways don't pay provincial property tax.

Mr Cordiano: That's absolutely ludicrous.

The Chair: Mr Pouliot, briefly, please.

Mr Pouliot: I have one brief question regarding financing. Some of us are very much aware that in its intent, in its spirit, originally Highway 407 was to be financed by the private sector. They would go to money-lenders, to a financial institution, to get the money. It became apparent in rather short order — in fact, it was what everybody knows — that the cost of borrowing, that is, the private sector going to money-lenders, would be 50 to 75 basis points more than the government borrowing, and in terms of the consequences, the toll-payers, the users, would be picking up the difference. There are no secrets, no magic formula. You can check the ROB this morning and you will see the cost of issues under the bond section of sovereign — Canada, provincial — vis-à-vis the private sector, and you will acquiesce that it's 50 to 75 points for quality issues.

The Chair: Question, please.

Mr Pouliot: The question is, under your proposal you wish to have the private sector do the borrowing. Who's going to pick up the difference? You're looking at anywhere from \$1.5 billion to \$2 billion for the proposed project. That's one heck of a lot of money. Who's going to pick up the difference in borrowing costs?

Hon Mr Sampson: I remember the member raising this in the debate in the Legislature on second reading. His premise is a shade flawed. There's no doubt that the private sector pays a premium for the cost of its capital. The private sector is also, we believe, as it relates to the operation of this highway, a more efficient operator than we could be as a government, and will achieve savings that it will be able to relay and parlay into its toll structure. But if you really believe that the cheapest source of funds is always government, then of course — and maybe this is the member's party's principle; I don't know

— you would believe that one should make every private business in this province publicly owned.

I don't carry that particular belief; I think the private sector properly prices the risk associated with construction of the highway. The private sector also benefits from being able to apply certain charges that relate to capital cost allowance against taxes, which can't be done in the public sector. If you take a look at the true risk transfers that we're proposing — what we're proposing is that the private sector build this highway, manage this highway, complete its extensions at no cost to the taxpayer. I understand how your government didn't particularly enjoy passing costs other than to the taxpayer, but we see it differently.

Mr Doug Galt (Northumberland): Minister, this seems to be a rather unique project that you're taking on. It's rather large — we're talking many millions of dollars — and dear knows how many are out there showing an interest to compete. I can see that if the government doesn't do this just right, it could be very awkward for us down the road. It's unique in that it's government property, a crown corporation, being turned over. What steps are you taking to ensure that there will be a level playing field, that all the bidders will be on an equal footing?

Hon Mr Sampson: We're taking numerous steps to make sure that every individual bidder, when they finally get into the bidding stages, has access to the exact same information. It's what I would say is a fundamental principle of the process we've designed. An example would be that to the extent that there are questions asked by bidders, the answers to those questions and the questions will have to be exchanged with all bidders. We'll have a process that will allow us to deal with that. Information will be available in a very secure room, in a very secure environment, as it relates to the highway and its current operation, to every bidder equally. As I said, a very fundamental concept here is to make sure we do our best to have that happen, so there is no one bidder who is preferred over another.

0930

Supervising that, as I said in my delivery, will be effectively two layers — three, actually, because we've hired I believe very professional advisers to begin with, who will be handling that process for us — but two additional layers of advice, one in the form of a process adviser and a process auditor who will help us make sure that the system we've got in place, to make sure it's fair, is being adhered to and is indeed working out that way.

The Chair: Thank you very much, Minister, for coming before us this morning with your presentation and for graciously allowing members to ask you questions as well.

We now move to statements from the official opposition, and we'll begin with Mr Cordiano.

Mr Cordiano: I'm very happy to be involved with this process and to make some comments on behalf of my party with respect to the privatization of Highway 407. Let me state from the outset, we are not opposed to having

the private and public sectors work together; in fact, we're not opposed to the privatization of Highway 407 in principle. However, what I have seen come before us in the form of Bill 70 is not an ideal piece of legislation for this process to be undertaken. There are many gaps and many unanswered questions.

First of all, the idea of transferring this over to the private sector in total can be accomplished. However — and you have not made any reference to the details of this — for what time limit? We are absolutely opposed to a sale in perpetuity, which it appears, from the silence in Bill 70, is the case. You have not made that clear. In addition to that, these kinds of projects, if they're built, operated and transferred back to the public domain, can be fully supported.

We have a number of concerns that go well beyond who you are hiring as consultants, and I hope you're not asking the Minister of Community and Social Services for her advice in terms of Andersen Consulting. We saw what resulted from that. I presume you're going to take much more caution with respect to those fees and how much you're going to pay out in consulting fees. That having been said, I also have a concern that, yes, you are hiring an independent process auditor, as you pointed out, but the public will have no say in this. It is my view that we should have third-party oversight and it is therefore my view that we should have the auditor of Ontario examine this deal, examine the structure of it, the details of it. Therefore, I will be proposing an amendment to allow the auditor to examine this deal to ensure that the public interest test is met.

During second reading debate, Minister, you argued that there would be further details and that Bill 70 is only a framework. I understand that, and yes, I do understand the need to have a deal consummated within the confines of some privacy. I can appreciate that. But at the end of the day, Bill 70 is too silent on too many fronts. Let me point out what some of those concerns are.

I said from the outset in the second reading debate that when the previous government built this highway, the public assumed most of the risk. This was an innovation — electronic tolling had not been demonstrated to work; there were some glitches at the very beginning — so therefore there were greater risks associated with commencing with this project. It was a start-up, for all intents and purposes. So the public undertook to finance this, which I thought was a mistake, in the sense that if you're going to build something like this, then have the private sector build it, operate it and then transfer it back into the public domain. That's murky to me in terms of what you've suggested. I'd like to see further details of at what point the highway would transfer back into the public domain. That's point number one, as I said earlier.

As you know, when the private sector goes out to secure financing, capital markets are pretty strict in their requirements, so there is a great deal of scrutiny that takes place. That is not the case with public projects, not to the same degree. I know the private sector here will probably have to get financing for this. There will be some assur-

ance of strict guidelines being met, and certainly any lenders would want to look at this very carefully.

The other major concerns I have are with regard to tolling. Obviously, you've created a monopoly situation for the eventual owners. They get to set the toll rates at whatever level they want. The public has no say, the consumer has no say. There isn't an independent body that would examine the increase in tolling as it pertains to the economy, how that impacts on people, on the drivers, ultimately; how that impacts on our trucking industry; how that impacts on the economy in general, because it does have an impact. This highway, as you know, is a winner. It will be utilized to higher and higher capacity rates. There is no doubt about that, so therefore this is a virtual monopoly, if you will.

I've also raised questions with respect to how you will evaluate this deal. What are the terms with respect to that? I understand you are making some details available in the RFP. You'll be setting out criteria. But I really don't understand how you put a price tag on this, so I'd like to see greater details with respect to that. I think everyone assumes that the highway is an eventual big winner in terms of its usage, but you're obviously trying to estimate potential here. You want, as you say, to get fair value for the taxpayers. Well, we want to make sure that the criteria you're putting forward allow you to do that. That's why I have suggested that we allow the auditor to look at this deal; and once you present the RFP, that the auditor have an opportunity to examine it.

I've also raised concerns with respect to whether this would be an asset sale or a share sale. I really don't understand how that would come about, so I'd like to understand that better. You have not made details available. The crown now owns the assets, so I would imagine it would be a straight deal, but there are complications involved with some of these transactions that I'd like to have further details about.

Ultimately, the other concerns I have are with respect to what happens in the event that the eventual owner of the highway should go bankrupt. Does the highway revert back to the crown? Bill 70 is silent on this. It allows for ownership transference, if I understood it correctly. Therefore, under a difficult situation like a bankruptcy, what would happen to the highway's operation? Would it be disrupted?

In going ahead with this, the biggest concern I have is the question I asked you at the very beginning: Why is it that the operator of Highway 407 is granted an exemption from paying property taxes? Every single business in Ontario has been reassessed, whether they are tenants — and that's one way to look at this. Highway 407 owners do not own the land underneath the highway, so therefore they're leaseholders. Every business tenant has been assessed for the paying of property or business tax. You have not made a convincing argument, in your answer to me on that question, that they should be exempt.

0940

I have a report from Wisconsin on the privatizing of Wisconsin's interstate highway. This is a policy paper. It was done by the privatization council in Washington, DC.

They are supportive of privatization. Because privatization will allow privatized projects, the state will derive local property taxes, state taxes and all kinds of other taxes. One of the key reasons for privatization that they put forward is that in fact the owners would pay property taxes.

I can't understand why this exemption is being granted — it is a huge windfall for the owners — when in other jurisdictions they are paying property taxes. You have not made any kind of convincing case for that. That's a huge concern I have, and I'm sure that every property taxpayer in this province would have the same concern. They're a going concern. Highway 407 is a going concern. It is a business. They should pay property taxes, and I'll be making an amendment to void that section of the act, to annul it.

I would thank you for this opportunity and look forward to further debate.

The Chair: We now move to Mr Pouliot from the NDP caucus.

Mr Pouliot: Bonjour. Let me depart from form, if I may, with respect, Madam Chair, and thank Viktor for his diligence in preparing the dossier, the background on Highway 407. Without intent, and respecting true professionalism, it does reflect indeed the contribution to the province, the newly found partnership between public and private, that the previous government endeavoured to put forth. Twenty thousand jobs, sir, do not go unnoticed in a period of recession, and the infrastructure that they provided still provides an alternative from the congested 401, the innovation of a partnership with the private sector.

Minister, I, for one, with some sincerity at my command, have a great deal of empathy and perhaps sympathy for your position. You must deliver. You are, as a minister, a facilitator. The government needs money because in its mantra, its manifesto, the Common Sense Revolution, it pledged to reconcile the budget, to achieve a zero deficit in the first term of office.

It's a bit panicky because you have chosen to extend the credit card by way of a tax break in lieu of paying your debts. You want to party all the time, you see, so now you're named the minister of convenience. You have a lifestyle to protect. You get used to being referred to as "Excellency," as "Mr Minister, this way, please." So I don't envy your task. But your record is immaculate, because up to this day you've done nothing. Now the Premier's office comes to you and says, "Sell whatever you can at whatever price and we'll put it against the deficit."

There will very likely be a federal budget in February. Then there will be a good-news budget where all those accounts will be coming back, taken off and put against the deficit. Then you will debate it and then you will drop the writ. It's hardly a secret to anyone. One is not to be blamed. But, please, your scheme would be cynical if it wasn't so thinly veiled. Minister, I've read your spin and actually it was not the very best. In fact, I resent the time that I spent reading the spin. It wasn't of the highest order.

Let me deal with financing. I did appreciate your note. You don't mind if I convey that? It says, "Giles" — two lls to Gilles — "do you need any help finding the financial section? Rob." I'm not used, being referred to as a socialist, but I did find it. I responded to the challenge. It's the Globe and Mail. What does it say? "Report on Business," in today's paper. Sometimes, Minister, I wish I would have a lot of trouble finding the business section. It's not the most lucrative part of the paper. This is not easy. I believed that it was in the cards, that it was OK for ordinary people to become wealthy, but after 30 years of this it's not that easy.

This is a long-term investment: government of Canada 9% coupon maturing June 1, 2025, 5.54%. Let's go to the corporate sector: Loblaws, 6.82%, a lot more than 1%. That's every year, you see; that's the yield. Union Gas, who are sure to be around, 6.42%. So that's 5.54%, 6.42%; 5.54% vis-à-vis 6.82% at Loblaws. Let's square it off here and call it 1%.

On your proposed project, on your extension, because the 69 kilometres at 1993 prices, 1994-95 — I signed the contract, \$928 million, aside from the tolls, so we're looking at more than \$1 billion; let's say in your case \$1.5 billion. At a 1% difference per year, the toll payers, who are also taxpayers, on financing a loan, building the same highway under the same standards — because you're not to compromise them, are you? — you're looking at anywhere between \$15 million and \$20 million a year.

You're behind the eight ball right at the beginning. How do you make it up? You make it up by charging the users. Then you go longer term. You establish a provision, as you float, and you feel the issues and then you go longer term. In other words, the tolls never come out.

We built the 407. We too wanted private financing. It was not possible. So what we said was: "The government will borrow because it's cheaper. The users will save. Eventually, after 30 years, it will revert back to the crown, its proper owner." That's not what you are doing here, sir. You might come next week into the House and tell us that you've hired a consulting firm — Andersen, for instance; it can be anyone — to guarantee the integrity of the project. Billy Joe, chair and CEO of ABC from Alabama, will be the owner of our flagship.

You call your process, your exercise, transparent. Will you please table the privatization review. The taxpayers paid for it. Surely they have an entitlement to see what they paid for. You came calling and they were there and they trusted you. Now they come calling again to see what their money bought. You claim that commercial privatization will not allow you to release the report. We have some difficulties with this.

But above all, the difficulty is we have a good thing with the 407. You have ample opportunity to follow the model that the previous administration set. Sometimes it's better to do little or to do nothing. What you have here is a blatant, obvious exercise. If you say so, OK, Monsieur, you're going to take the money. You'll sell a piece of concrete that can't talk back, a public utility, to the highest

bidder. You'll take that \$1 billion, which is really manna from heaven, and you'll put it against the deficit and you'll say, "We've done well." If you get the favour of the electorate you will say, "The future can last a long, long time," in case it does.

But, you see, you've got to cross that hurdle. That's it now. This issue won't be around maybe after if you don't balance the books. So what you've got to do is make an impression on the electorate, jump through every hoop, cross every hurdle and get \$1 billion.

0950

To do that, you have the convenience of Highway 407. You're selling our infrastructure to the private sector. You don't have a partnership. You have little recourse. You're putting the users on the hook forever, in perpetuity, right off the bat, to the tune of \$15 million to \$20 million per annum. That need not be, because the marketplace offers you an alternative here, the alternative that we choose.

I don't envy your position in terms of conscience. It's not something you park at the door, Minister; I've been watching you closely. You have your whole life ahead of you. Why don't you call it what it is? This is an adult audience. We can take the hit, Minister.

I've had four ministries under the previous administration. With the favour of the electorate, I now find myself, after 14 years, as a member of the third party. But surely you're not trying to convince the people here, whose time is so valuable, who pay you the courtesy of their presence, and your friends at the table, when you talk about financing — I once had a broker like you.

Minister, I want to wish you well, but this is open for debate. It's not easy. I thank you very much.

The Chair: Minister, that concludes our opening presentation of statements. Thank you very much for coming to the committee this morning, and your colleagues. We appreciate it.

REGIONAL MUNICIPALITY OF HALTON

The Chair: I'd like to now call upon representatives from the regional municipality of Halton. Good morning, Ms Savoline. Welcome to the committee. When you're settled, begin, please, by introducing yourself and your colleagues formally for the Hansard record, and you have 30 minutes for presentation.

Ms Joyce Savoline: My name is Joyce Savoline. I am chairman of Halton region. We're really pleased to be here with you today.

I'd like to introduce the three gentlemen who are with me today: our chief administrative officer for the region of Halton, Brent Marshall; Dave McCleary, a senior policy adviser in the planning department at the region of Halton; and Tom Eichenbaum, the director of engineering for the city of Burlington. We are here today on behalf of the regional municipality of Halton and also Mayor Rob MacIsaac of the city of Burlington. I am really pleased to appear before you today to communicate our support for the very quick passage of Bill 70 and the earliest possible construction of Highway 407 across our region, which is

more commonly known in our municipality as "the missing link."

This submission is a co-operative effort between Halton and our municipal partners. Our partners are the city of Burlington and the towns of Oakville, Milton and Halton Hills. I understand that Mayor Mulvale from the town of Oakville will appear before you this afternoon to address a number of issues that are unique to the town of Oakville. We are in total support of her submission as well.

This is not the first time that Halton and its municipal partners have acted in unison on the issue of Highway 407. In fact, we remember when it was called Highway 403. Way back in 1983 we collectively endorsed resolutions identifying the construction of the former 403 as the number one provincial road priority in our region. Since that time, our councils have reaffirmed this position many times with each new provincial government. We have met with each Minister of Transportation and our MPPs to ensure that there was full understanding of the importance and urgency of the construction of Highway 407. This importance is to the economy of not only our region but also those in the surrounding area, including the greater Toronto area, Hamilton-Wentworth and Niagara region.

The title of Bill 70 is very appropriate, and there are a few key words within that title which I believe best describe the critical importance of this highway to the region of Halton.

The QEW is a critical transportation and economic link between the GTA, Hamilton-Wentworth, the Niagara region and the United States. However, the past 15 years have seen the rapid deterioration of the QEW's ability to efficiently move raw materials, finished goods, commuters and tourists through what we can best describe as a freeway hourglass.

Because a picture is worth a thousand words, you will see a small hourglass on the next page. It describes to you how 12 lanes on one side and 10 lanes on another all form into a very congested six lanes of QEW highway through Halton. I can't describe to you the nightmare of traffic through that area. It exists almost all day.

Halton has monitored the growth of traffic congestion on the major road system, including the QEW, for about 25 years now. Congestion occurs on the QEW when the volumes in one direction reach 80% of capacity. At these volumes, merging and exiting from the road becomes very difficult. Further, the weather conditions and lane restrictions when there is road work being done make it even more disabled. A car on the shoulder is a disaster. Even though it doesn't affect the lane, just the slowing of traffic is a distraction. When the QEW reaches 90%-plus of capacity, it becomes unstable, with any minor disruption resulting in a total breakdown of operation.

When we look at this hourglass, we judge it in the time period of 7 am to 7 pm, and I think we're being generous, because I think we could even expand those time periods. As you can see, in 1991, five hours were defined as being congested. When you move to the present day, 10 out of

12 hours are congested. There's another graph on the next page that will help you see that.

Under these circumstances, all major roadways come to a complete standstill, with trucks diverting to minor collectors and also neighbourhood streets. Access into and out of the major GO stations adjacent to the QEW becomes impossible, and in many cases what is normally a 15-to-20-minute trip can easily take three hours. I can speak to you about that from personal experience, believe me.

Most serious, however, is the impact of a road system breakdown on the ability of the police, fire and ambulance services to respond to emergencies under these conditions.

Commuters and truck traffic are also using arterial roads through residential areas as a means of avoiding the congestion on both the QEW and what is now known as Regional Road 5, which used to be known as Highway 5 or Dundas Street. This unintended diversion of traffic disrupts neighbourhoods, creates unnecessary safety problems and higher noise levels, increases the wear and tear on our local roads, and prematurely triggers expensive local road improvements.

The construction of Highway 407 across Halton will increase the road system capacity by as much as 50% at the Bronte Creek and approximately 30% at the Oakville Creek. It is, however, important to understand that this congestion relief will only last five to 10 years before transportation demands create the need for additional capacity improvements, such as the widening of the QEW and Regional Road 5, the expansion of GO Transit services and additional transit initiatives. While the construction of Highway 407 provides a 5-to-10-year window of congestion relief and management, the province must continue with its commitment to the widening of the QEW through Halton to eight lanes by the year 2011. I can't stress that enough.

The Oakville, Burlington and Milton chambers of commerce support the construction of Highway 407 and have expressed concerns that the serious congestion problems and unreliability of the Queen Elizabeth Way for goods movement is becoming a major liability in the attraction of new businesses and industries. It is also impacting the economic viability of existing businesses. Businesses which rely upon just-in-time delivery are particularly impacted by these delays, while others experience productivity losses.

We have a plan in Halton called the Halton urban structure plan. It is a plan for growth management. I'm very proud of it. It has taken us 14 years to develop. It is a plan that allows our community to grow, respecting the character, values, standards and the environment of Halton region and its four area municipalities.

1000

The Halton urban structure plan will create a sustained economic return through private and public sector investment. This highway is an integral part of that plan. There will be up to 200,000 people, and 3,000 to 4,000 acres of new freeway-corridor-based employment land will be created when this plan becomes real, as soon as we

pass our official plan amendment early in the spring. I think we were all young when this process started, but we are really eager to see it conclude this spring.

Early in 1999 we will deal with the amendment to the official plan, which will designate the lands in the town of Oakville between Regional Road 5 and the future Highway 407 for urban development. This area will house approximately 50,000 people and contain about 1,000 acres of land for future economic development.

The implementation of the Halton urban structure plan, which includes the north Oakville area abutting Highway 407, will create a sustained economic return through private and public sector investment in infrastructure, housing construction and the jobs brought to this area from new industries which will locate in the business parks that will be part of our area.

The province of Ontario has the potential to be a huge beneficiary of the proposed urban designation in north Oakville. You currently own 1,000 acres of land abutting Highway 407 and Regional Road 25. That interchange can reap lots of financial benefit for this government. The value of these lands could range from \$50 million to \$200 million depending upon future land use designations and conditions when the province sells the land for development.

Highway 407, in combination with local road and transit improvements and the expansion of GO Transit, are the key elements of the transportation infrastructure necessary to support this growth. Because of the high levels of congestion that persist throughout all of Halton in the south, it may be necessary for our council to make development of this area contingent upon the commitment to the completion of Highway 407.

We have had extensive experience in public-private partnerships in Halton region and I compliment you on taking that initiative. In fact, we have had many discussions at the staff level, your staff calling our staff trying to learn more about our experiences and our successes. We were very pleased to have that dialogue. While it is recognized that there must be a strong business case for private sector involvement in Highway 407 or any other public-private partnership, the nature of the partnership should not result in a toll or any other user pricing structure that is punitive or is a disincentive for use by commuters and the trucking industry.

Halton has done a survey of the users of Highway 5, or now the Regional Road 5, and we have some, I think, very valuable statistics. We are from the government and we are here to help you, so we would be more than willing to share this survey with you so that you can see the results of what the people said along Highway 5. I think you will be pleasantly surprised to know that there are a lot of people who would divert and use Highway 407 in that instance.

If I could explain a little bit about why I feel that is, at this point in time we have tremendous congestion at the QEW and 403 interchange in the west part of Burlington near the Hamilton border. When people are committed to that roadway, they stay on the QEW. By the time they get

to where they can access the 407, way up in north Oakville, they've already committed. They've already gone through the worst congestion, so why now jump on the 407? However, if they have the opportunity to get on the 407 much earlier, where that congestion exists, you will see a higher use of 407 through the area that we call "the missing link" now.

Another area of concern is the potential for the private sector partner/owner to delay or not build a couple of critical interchanges across this new Highway 407, and I'd like to flag those for you now. It would be devastating for our region — devastating — if the Appleby Line interchange and the Neyagawa interchange were not built immediately as the highway were being built. These are two interchanges that cannot wait to see what will happen in the future, and I can't stress that more strongly.

It is imperative that this transit corridor continue to be protected and that the design and operation of Highway 407 through Halton accommodate transit vehicles and supporting infrastructure such as commuter or ride-sharing parking lots at major interchanges. Further, access and pricing policies should not prohibit or discourage the use of Highway 407 as a major commuter transit facility.

While Halton and its municipal partners and our chambers of commerce are committed in our support for Highway 407, the construction and operation of this facility will have impacts upon adjacent communities as well. There is a need for a high level of communication and co-operation between regional and local governments in Halton, the Ontario Transportation Capital Corp, the Privatization Secretariat and the eventual private sector partner or owner. The communication will contribute to less crisis-type situations.

Therefore, we are requesting that the government give consideration to a rewording of section 18. It's on page 10 of our brief, and the underlined portions are the portions which we would like to see included. They deal with part of the management of the highway, because it's critical that there be a high level of co-operation among everyone who will be affected by the highway to make sure this highway is of the utmost success so that we can look back and be proud of how we deal with it. In Halton we call it "the bible of the relationship," and this part will be a very important part in that bible.

We are pleased to note that section 44 of this act includes a provision where the minister may require the owner to prepare an emergency plan. However, Halton believes that this section should be improved to require the preparation of such a plan and, further, that this plan be prepared in co-operation with local emergency services personnel and emergency planning coordinators. "Optional" is not something we should be considering when we're talking about emergency planning; we all have plans and this will be a very important part of any plan in our region.

This document addresses a large number of responsibilities related to the design and the construction of Highway 407. Halton, Burlington and Oakville have been directly involved with the Ministry of Transportation for

the past 20 years in the planning of this highway. Through the strong working relationship there were a number of key, important design features that were identified and, I stress, agreed to by the ministry and the municipalities as being essential to minimizing the impact of this facility on existing adjacent neighbourhoods through the city of Burlington.

These features include:

Deferral of the possible interchanges at Upper Middle Road and Guelph Line; we're not closing the door, but the crack is very tiny at this point in time and we would like to keep it that way;

Enhanced or extended noise abatement features including the depression of the road allowance and noise barriers through certain sections of this highway;

Linear public open space areas; we have a great opportunity to create these if we continue to keep the trees as a buffer and create passive areas through these open spaces;

Bridge widening for pedestrian and bikeway facilities;

Protection of woodlots and vegetation during construction; we're very high on the environment in the region of Halton and we will be watching very closely and would like to work with you on making sure that the parks through Halton are preserved and protected in the standard to which we are used to.

These matters are described in the submission appendix entitled Design and Implementation Issues in the City of Burlington which is included in our submission to you today.

1010

While we recognize that it is inappropriate for these matters and this level of detail to be incorporated into the legislation, we are requesting these following considerations:

The creation of a ministry/owner/municipal liaison committee to coordinate local interests and ensure a high level of communication between the partners during the design and construction stages. There's nothing more detrimental to the success of any project than miscommunication or no communication at all. We pride ourselves on that in Halton, we would like to continue that, and we will work with you.

An opportunity for Halton and its municipal partners to provide direct input to the preparation and contents of the request for proposals document as a means to ensure these requirements are put forward as minimum standards. It's a very important issue to us.

We are confident that these measures will ensure a strong and positive working relationship between the province, the future owner and local municipalities in such a way as to provide for the earliest possible opening date of this much-needed facility.

In closing, on behalf of Halton council, all our municipal partners and the chambers of commerce, I would like to thank this committee for the opportunity to present our submission this morning. We believe that a commitment to the construction of Highway 407 is a good-news story for the taxpayers of the entire province of Ontario, the

commuters through our area and businesses within the GTA, and in particular to Halton region.

While Highway 407 is urgently required, it is also important that the province ensure that the final agreement which is secured with the private sector partner is in the best interests of the citizen, that one taxpayer in Ontario. I urge the provincial government to consider the changes we are recommending to Bill 70, to move it forward expeditiously to royal assent and to proceed with the request for proposals from the private sector. We are your partners and we will work with you in any way we can.

We're pleased to answer any questions, Madam Chair.

The Chair: We have just about three minutes for questions from each caucus. We'll begin with the NDP caucus. Mr Pouliot.

Mr Pouliot: Thank you, Madame. Nothing short of an excellent and, for the members of the committee, I know for myself, enlightening presentation.

In your conclusion, you mention the "minimum standards." I have a bit of difficulty with the language and I need your help. A standard is a standard, maximum or minimum; it's a criterion that one must meet. I take it that it's not catalytic; it's not going to make or break the presentation, certainly not.

On your page 10, I am quoting: "We are pleased to know that section 44 of this act includes a provision where the minister may," and you've underlined "may" in bold lettering, "require the owner to prepare an emergency plan." It's difficult; if you were a member of the government, or the general public, or yourself, would you not like to substitute "may" with "shall require the owner to prepare an emergency plan"?

Ms Savoline: That's my whole point in that paragraph. I continue to say that "Halton believes that this section could be improved to require...." That was my whole point. I'm glad that it was flagged, however we think it could be stronger.

Mr Pouliot: We too are in favour and very much aware, because of your presentation and others as well, that door-to-door delivery is important, the just-in-time concept, that the people working on the line, bringing home a paycheque every second Thursday in Oshawa etc, be given the right to go from point A to point B.

We're seeking the same destination, I think it's safe to say, all of us, but we take a different route to get there. We have some quarrel, not with the concept, but with the privatization, and I'm happy that you raised the accessibility by way of, how much is it going to cost to use the highway?

I have one more question. You've stressed the Environmental Assessment Act, the quality of life. You've mentioned the trees as a buffer zone and I guess the air that we breath, the environment. You've also mentioned, certainly in tone, that you're used to this and you want to preserve this. I must say this: Under the Minister of the Environment the budget has been reduced by 50%. More than 50% of the employees have been given pink slips, told to leave town.

Are you really confident — you flag it several times — that we have everything in hand to make sure that the environment will be respected? Because we can achieve both. That's what you're saying.

Ms Savoline: Yes, absolutely. Halton has worked with all governments in the last 20 years to accomplish that. We've had input into all discussions and preparations thus far. I think it's been a good working relationship and we think the standards have been preserved.

Mr John Hastings (Etobicoke-Rexdale): Ms Savoline, thank you for coming in today. I'd like to get your reaction generally, as a background, in the total context of Mr Cordiano's concerns related to the non-taxation of the underlying land on the 407, with your concern about ensuring that the toll rates that would be charged in the future — particularly the trucking industry, but it could be any of the users that choose to use the expanded 407 — would be balanced out. Do you believe, with the official opposition's concern here, that it would actually increase the rate of pricing on the tolls for future users if there were taxation included, as seems to be their position?

Ms Savoline: I can't comment on the detail of that, Mr Hastings. However, the municipality would certainly benefit if there were property taxes paid on this highway, and I'm sure the railways would be very happy that there would be a more competitive kind of situation for them. However, I don't think that argument ought to be a trade-off for whether this highway is built or not. I think we need this highway and that's a detail you can talk about in other times. My pitch to you here today is that we want this missing link built.

Mr Hastings: What do you figure we're losing in terms of lost production in your area, whether it be the auto sector or food processing?

Ms Savoline: They're severely impacted. I believe there are figures that haven't been released yet, but across the GTA we're probably losing anywhere from \$1 billion to \$3 billion.

Mr Hastings: Annually?

Ms Savoline: Yes. It's the congestion. The congestion is our biggest enemy here. We need to free up that congestion. Things aren't moving. If I told you that to get here for 9 o'clock this morning I had to leave at 6 o'clock, you might believe me. It really is horrendous.

Mr Baird: Just a brief question following up on that issue. Obviously, the competitor to Highway 407, being the provincial government's 401, doesn't pay taxes either, so there has to be some sort of level playing field. Otherwise, I suppose if the bill passed, whoever the new owners of the road would be would simply have to add the price of any property taxes to the toll, so the toll would be much higher. For every single other competitor of a four-lane highway in the province of Ontario, of course there aren't property taxes and the provincial government still pays.

I share your view that we've got to get this built. Having travelled the road many times, when I see your report and I see the number of lanes before your region

and after your region, it's absolutely stunning. The only area where I would disagree with your presentation is the 10 of the 12 hours. I mean, I've been through Burlington at 10 o'clock at night and had traffic jams. It's absolutely extraordinary. It's not just a tremendous inconvenience to folks who live there and have to commute either to Peel or to Toronto, but it's a tremendous inconvenience and hampers economic growth.

I share your conclusion. We want to get this done and we want to get it done as quickly as possible, not just for the economic growth it's holding back but also for the tens of thousands of lives it's inconveniencing every morning and every night.

Ms Savoline: I have my ceremonial spade ready and I'll be glad to welcome you all to Halton.

Mr Baird: We'll call upon you.

Mr Cordiano: Thank you very much for that presentation. The missing link has to be built. There's no question about it. In fact, in 1989, I believe, we had money allocated for the missing link. It was called Highway 403.

Ms Savoline: That's right. I'm old enough to remember.

Mr Cordiano: It was a highway that was to be built. Money was allocated. You remember that.

Ms Savoline: Yes, I do.

1020

Mr Cordiano: The point I want to make is that I think it's absolutely ludicrous that the government is exempting Highway 407 from paying property taxes. I ask the government members, does that mean Hydro is going to be exempt as well? The same taxpayers, by the way, are paying for that. This makes no sense. You know that. I think the minister has been caught on that. I think he's got to go back and rework that. The municipality needs the revenue. I think that makes no sense whatsoever.

Ms Savoline: I still would like to stress that that is not an issue that ought to stop the immediate construction of this highway.

Mr Cordiano: No, and it shouldn't. No one is suggesting that. No one is suggesting that under any circumstance. The highway should proceed in its construction. That's a different matter altogether, but it does affect municipalities.

Mr Mario Sergio (Yorkview): How much time do we have, Madam Chair? Enough time for a question?

The Chair: You have time for a brief question and a brief answer.

Mr Sergio: Thank you very much. This is not the first that you have appeared down here in Toronto in front of this or other committees. It's always nice to see the local people come and speak in support of their area municipalities.

We agree that something must be done, not only for the Halton region area but all the way to Niagara, so we can get people faster to the casino down there. It's a joke.

I know that your presentation has been based solely on the need for the construction of the 407 extension. But as a local politician there, I'm sure — and you did mention

that, yes, ultimately it must be done in the best interests of the taxpayer. You may not want to get to it in your answer, but as a local politician, wouldn't you be interested in the fact that ultimately the users, the carriers of goods and services and residential people as well, will be paying for that and, contrary to what the minister has been saying, will be paying twice, once with the toll and once with the construction? Wouldn't it make more sense to make it more viable and keep it in the hands of the taxpayers? — if you wish to answer that.

Ms Savoline: If there isn't an ability for the private sector to build this highway, I think the government ought to consider it a high priority. However, as I said earlier, Halton is a pioneer in public-private partnerships, and we know that the ways are changing, that taxpayers can't continue to pay for everything and that there needs to be some kind of user-pay system and privatization. Providing that all the wrinkles are ironed out, I think it's time to proceed, and we're willing to work with you. We're your partners in this and we want to be part of the solution, so please call on us any time. We do have the expertise.

Mr Sergio: Thanks for coming down.

The Chair: Thank you very much, both you, Ms Savoline, and your colleagues, for coming before the committee this morning. We appreciate your advice and, clearly, your offer of co-operation.

Ms Savoline: Thank you very much.

CANADIAN AUTOMOBILE ASSOCIATION ONTARIO

The Chair: I now call representatives of the Canadian Automobile Association Ontario. Good morning. Welcome to the committee. As I'm sure you know, you have 30 minutes for presentation time, and that will include time for questions. Please begin.

Mr David Leonhardt: I'll take about half of that with my initial remarks.

I know we've already heard from the minister today, but I'd like to start with something he said earlier when he was introducing this bill on second reading:

"We think it rather strange that one would ask motorists, whether they be commercial vehicles or private vehicles, to absorb the cost of travelling on the highway by paying the toll and yet at the same time financing that very same road they're driving on through their tax dollars. That's absolutely ridiculous and it's not an effective use of taxpayers' money."

That was the minister speaking and that will colour some of my comments.

I'd like to thank you for inviting me here to speak today on Bill 70. I realized how precious the speaking time is when committee staff told me that you were holding just one day of hearings. That's one single day to debate essentially the future of transportation in this province. I say the future of transportation because this bill sets some very ominous precedents.

First off, CAA Ontario is a federation of five CAA auto clubs, and I act as their spokesman here in Toronto.

Together we represent 1.7 million motorists and their families, and many of these are potential users of Highway 407; in fact, some of them are, but most of them choose not to be.

Highway 407 was built with public acceptance of the tolls. I use the word "acceptance," not "support," because nobody really supported the toll. But the government came to us and they said, "It's tolls or no road," so what choice did we have? Motorists were paying high gas taxes and licence fees for their vehicles. We still are. We were paying for twice the roads we were being given, and we still are. Yet the government came to us and said: "We know how much you're paying. We know you really need this highway" — we still do — "and we know it's our responsibility to build it. But you know how it is. We've got expenses. So if you could give us a little more cash in the form of tolls, we'll build this road for you."

So CAA motorists and other road users reluctantly agreed. Again, what choice did we have? But we did extract a commitment from the government that tolls would be temporary, to pay just for the construction. We did get a third of the highway built, and we're paying for it through temporary tolls. When the tolls go in 30 years, we will have paid for the construction, and we will also have paid for the first 30 years of repairs and maintenance.

Now the government's coming back to us. They're saying: "We know you pay \$3.5 billion in road-use taxes, we know we only spend \$1 billion of that on the roads, and we know we promised to build you a highway if you paid the tolls for 30 years. But you know how it is. We've got expenses. We've built this nice little stretch of road, but it really doesn't go anywhere, so if you want us to make it useful, you'd better just approve tolls forever."

Quite simply, this bill violates the pact between the government and the motorists in this province, and this time we're not saying, "What choice have we got?" This time we're saying, "Enough is enough." Minister Sampson hit the nail on the head when he said motorists should not finance this road through both taxes and tolls. But how does Bill 70 rectify this obvious injustice the minister noted? It in no way addresses gas taxes, it doesn't touch diesel taxes, and it certainly doesn't reduce tolls.

Let's consider what it does to tolls. First, it increases tolls from a 30-year maximum to an infinite period of time. Keep in mind that the current tolls pay for construction, repairs and maintenance, and a reasonable profit. When construction is fully paid, that amount of tolls goes straight into profit, making this a very lucrative scheme. Of course, this assumes that the toll rates will remain the same. If there's anybody who really believes that, I'd like to talk to you outside later; I've got some prime agricultural land in Antarctica I'd love to sell you. We hear there are already plans to increase the tolls on the highway, and eventually, they could be quite extravagant.

But let us recall — and it's been said already today — why Highway 407 was first built and why each and every one of us in this room wants the extensions built. Highways 7 and 401 have reached gridlock. Toronto is hostage to gridlock. We need Highway 407 to carry the

increased population and traffic flow in and near the greater Toronto area. What I'm about to talk about — the toll roads — will have a very profound impact on the very reason we need these extensions built.

The government reminds us that supply and demand rule the private sector, and the minister assured us yet again this morning that in order to draw traffic, the owners must keep toll rates low. It makes sense, unless, of course, what if attracting traffic is not the goal of a private corporation? The laws of supply and demand work very differently, depending on which one is greater. If supply exceeds demand, then competition can indeed push prices down. But if demand exceeds supply, prices are just driven upward.

1030

Congestion is, by definition, the result of demand exceeding supply. All highways and arterial roads around Toronto right now face almost perpetual congestion. There is great demand but precious little supply. But the worst is yet to come. MTO predicts a 250% increase in traffic within the GTA over the next 25 years, and most of that is coming within that 905 belt, the very region that 407 is going to serve. It really is a lucrative cash cow.

So I ask again, what if attracting traffic is not the goal of the private company? As gridlock engulfs other roads, our threshold for paying tolls is bound to rise. The Highway 407 operator may very well be able to just keep raising those tolls with impunity, knowing it will always be able to attract enough wealthy clients to pay the toll, and after all — as anyone here who knows anything about business knows — the fewer vehicles, the less maintenance and the lower the repair costs. If I was a shareholder, I would demand higher tolls. If I was a shareholder, I would demand higher service fees. If I was a shareholder, I would want less traffic and I would want profits maximized. But if I was just your average motorist, some poor sucker stuck in gridlock on another highway, and if I knew that the wealthy had their ticket to ride on the 407, I would be fuming.

We know that Bill 70 allows the government to regulate tolls, but what corporation is going to sign a contract giving the government a blank cheque over its revenue stream? — unless that company is also interested in buying that prime agricultural land I have in Antarctica. Besides, it could simply raise the service fees, which are already at ludicrous levels.

Where is the master plan for the province? Selling this highway to the private sector clearly would be counterproductive to its very *raison d'être* to reduce congestion on other roads. In fact, if our goal is to reduce congestion, why are we even thinking about tolls? Why are we even thinking about building a disincentive for 401 users and Highway 7 users to make the switch to Highway 407? It doesn't make sense.

More ominous than what this bill does to Highway 407 is the precedent it sets, the precedent I mentioned in my opening remarks. Bill 70 creates a whole new class of highways: private toll highways. Fine, but if Highway 407 can be sold, what's stopping the government, or future governments, from repeating this? Highway 416 has just

been built up in Nepean. Who's to keep it from being sold? What about Highway 401 or the QEW or the much-needed extensions to Highway 410? These could be lucrative. This sure is a greasy slope that we're heading down with this bill, and it's a significant change for mobility in this province.

There have been virtually no consultations on this, any more than there were on the downloading of highways, the very downloading that has changed our once-proud King's Highway system to a dotted line, with motorists left to connect the dots. An advertisement calling for input on how the highway is to be managed? That's all we were offered. Is that a substitute for debate on creating a whole new class of highways? And one day of committee hearings? That is not a substitute for an open, public discussion of the future of mobility in this province, because that's what we're talking about here.

This bill is not about a better transportation system. This bill is not about building the Highway 407 extensions, despite the grand speeches of so many MPPs in the Legislature. The delegation from Halton is misguided on this. Mr Baird, I have to say that you too are misguided on this. The government has the means to build the extensions without Bill 70. Nor is this bill about tax fairness, as the minister stated in the Legislature at second reading. No, no, no. This bill is simply about delegating to the private sector the right to toll motorists forever in order to reduce the debt from other programs with nothing to do about motoring today.

In a letter to CAA, Minister Sampson said it quite well: "We will use the proceeds of the sale to pay down the provincial debt." The proceeds to which he refers are the government's advance payments on the tolls that will be collected later. What an ingenious tactic: Reduce the debt that future generations would owe by creating a charge for future generations to pay, but future generations of motorists only. Again, tolls are the wrong instrument to pay down the debt: past, present or future.

If the government wants tax fairness, we have some recommendations. We hear there may be some sales tax reductions soon. If so, the first reductions should go to those taxes such as the gasoline taxes that are being taken for general revenue, that should not be there in the first place. They should be going to the roads. Second, we understand that the cost of building the 407 may actually be paid off before the 30-year period. In that case, the toll should go off the moment it is paid.

In summary, we have yet to see a single valid reason to sell this highway, nor do we see any transportation planning or public consultations to justify a total reorganization of the way this province's transportation system is organized. CAA Ontario predicts four outcomes from Bill 70:

(1) The government will break the promise to limit tolls to a short time and to lift them when construction has been paid.

(2) Tolls and service charges will likely rise, and if the company running it has any financial savvy whatsoever, quite exorbitantly.

(3) Highway 407 will fail to relieve the growing congestion on Highway 401, Highway 7, Major Mackenzie, the 403 and all the other highways in the region.

(4) Governments desiring extra cash in the future will be sorely tempted to sell other highways for profit.

We see no upside to this bill. We see motorists paying more and more, and we see them getting less and less. This bill will increase their transportation costs without reducing the growing congestion, and it will set a dangerous precedent for other areas of the province where costs could also rise, again without relieving congestion.

CAA Ontario and its 1.7 million members cannot and will not support this bill. We urge this committee to recommend not proceeding with Bill 70.

The Chair: We have five minutes for questioning from each caucus. We'll begin with the government caucus. Mr Baird, Mr Spina and Mr Hastings have all indicated they want to ask questions.

Mr Baird: I'll go quickly then. I certainly agreed with the Premier when he said, "The 407 east is an ideal opportunity to have a new look at what it takes for the private sector to finance a highway," and further, "We'll look to the private sector to come up with creative solutions. We're open to dramatically new ways of doing business that will allow us to keep our network at peak efficiency without burdening taxpayers." I agreed with Premier Rae when he said that.

I also agreed with my colleague Mr Pouliot, the father of toll highways and of private sector involvement in transportation capital, when he said: "We need to build Highway 407 now to relieve the stress on Highway 401. We must also reduce fuel waste and pollution caused by congestion on the 401 and other east-west routes." Then the press release issued by him said, "While tolls are only planned for Highway 407 at this time, the minister said he is willing to explore opportunities to use them in other new transportation corridors." I agree with our colleague.

I did want to say three things very quickly. In terms of the time for consultations, there has been a terrific amount of consultation dating back to last year, when RFPs were issued in June 1997, ads were put in the Globe and Mail, and other news releases and backgrounders issued last October after the public input. We had no objection to three days of public hearings. We had to have a conference call the other day, because we cancelled all the hearings yesterday because no one wanted to come. We put ads in the newspaper and on television and got it widely known that we were prepared to listen to input. We were going to hear every group that wanted to appear, and we even had to cancel time because we had allotted so much time for consultation that we were able to hear everyone in half the amount of time that we were prepared for.

The regional municipality of Halton, the corporation of the town of Markham, Durham, Oakville, the Greater Toronto Home Builders' Association, the Greater Peterborough Chamber of Commerce, the Durham Real Estate Board, the Canadian Council for Public-Private

Partnerships, I think they're all going to come and speak to the importance of passing this.

Just one final point. We don't just have to pay for the construction but, as you said, the repair and maintenance of it. After 30 years, most highways need to be substantially rebuilt, and that's a new potential cost in 30 years of \$3 billion, plus it could go to six lanes or eight lanes, depending on the traffic volume. It's not just a short-term phenomenon, but indeed it is a long one.

1040

The Chair: Mr Spina.

Mr Leonhardt: Can I just address this last point? Mr Baird is accurate in that highways in this province very often have to be rebuilt long before they should, because the budget on the transportation ministry is so tight that the repair work along the way is not completed. If the 12-year repair of the pavement is not dealt with on time, very often what happens is the whole road has to be dug up, the expensive part, which is underneath the pavement. However, if it is being maintained along the way — and with tolls one would assume that it is — there is no need for that kind of total rebuilding. That's a fallacy. It's based on the fact that the highways in this province are not being given the money that motorists are paying to keep them up to good standard. It's like your roof. If you don't fix it when the first little leak comes in, by God, you've got a big problem later on, but if you had a toll on your roof, you shouldn't have a problem with that.

Mr Joseph Spina (Brampton North): One quick statement with regard to your concern of escalating toll rates. I believe there are provisions within the bill and also within the regulatory environment that would surround the bill that would control that on a usage basis.

My simple question to you is, did you consult with your membership regarding the presentation that you made today?

Mr Leonhardt: We have spoken with our membership.

Mr Spina: How?

Mr Leonhardt: We have done surveys, and particularly our national office has done surveys, on under what conditions they would accept tolls. This highway meets some of those conditions, but very few of them. Those conditions include that there be a free alternate which is well maintained.

Mr Spina: Which is there.

Mr Leonhardt: Can you name me one?

Mr Spina: The 401. Highway 7, four lanes.

Mr Leonhardt: The 401 is congested. There's a big wall in the middle of it. That's not a free alternative.

Mr Spina: Continue.

Mr Leonhardt: Second of all, that the tolls be lifted the moment the construction is paid for. Under the previous administration already that has been violated to some degree, because it's paying for more than just that, the first 30 years of repair and maintenance. This is going well beyond that.

Mr Spina: As a 25-year member of the CAA, I have only seen one consultation document come out of CAA on

407, and that's when it was originally proposed by the previous government. I have not — I repeat, I have not — seen anything in recent months or even in the last couple of years regarding the tolling system on 407.

Mr Leonhardt: I'm sorry. I don't know what you're referring to.

Mr Spina: Frankly, I am outraged at the presentation, because I do not think you represent the bulk of the membership in your opinion.

I'm going to move to one other quick point. It's your context that the government should be financing this highway entirely on its own, which I believe is what you indicated, and that if there was to be a reduction —

Mr Leonhardt: No, sir, I did not.

Mr Spina: What constructive alternative do you propose then?

Mr Leonhardt: I indicated that we're paying \$3.5 billion in road use fees and the government is only spending \$1 billion of that, and I may be being generous on that.

Mr Spina: They're spending a lot more, because there's \$545 million being spent in northern Ontario alone.

Sir, you worked in Ottawa for many years. Not one red cent of federal gas taxes came back to support what you indicated was the thin line of highways across Ontario, and it is still the case.

Mr Leonhardt: You're right.

Mr Spina: Talk to your federal counterparts. Why didn't you do something when you were in office?

Mr Cordiano: Chair, that question was totally out of order.

The Chair: Thank you. We're moving to the Liberal caucus.

Mr Cordiano: Maybe Mr Spina consults with his constituents every time he makes a speech. Before you utter a word in this Legislature, you consult with your constituents? Let's have some courtesy around here and not attack witnesses.

I want to thank Mr Leonhardt for his presentation. I think he made an excellent presentation. He made some very important points that obviously are not important to members of the government.

Mr Leonhardt, the ability of this operator, whoever ends up with the 407, the successful bidder, to charge with impunity tolls at whatever rate they feel is appropriate is unacceptable to us. Furthermore, it is unacceptable that this highway will be sold indefinitely, in perpetuity, if you will. There is no time line mentioned in Bill 70. How do you feel about that?

Mr Leonhardt: That's what is going to lead to the tolls going on forever. Again, as I said, this is not a bill about building the extensions. If the government wanted to use the same methodology it did to build the centre as the extensions, I'm not going to say we would support the tolls, because that would be inaccurate, but we would accept them. We would recognize that that's the way things are done these days. We agreed to that when we sat down with the former Minister of Transportation and said, "Fine, put the tolls on for 30 years or until it's paid for." It

would be very simple to build the east extension and the west extension along that pattern.

Mr Cordiano: Do you think it's appropriate that the owners of the 407, a business, a going concern as it will be, private sector, be exempt from paying property taxes that will be paid, those same property taxes, business taxes, by Ontario Hydro, CN and CP Rail, other utilities?

Mr Leonhardt: I'm sorry. We can't comment on that.

Mr Cordiano: OK, you haven't thought about that, but that's what's in Bill 70.

Mr Leonhardt: I'm sorry. Unless it has an impact on motorists, and at this point at least we haven't identified one, I'm not in a position to comment on that.

Mr Cordiano: Fair enough. I just think that ultimately it does have an impact, indirectly, in that the taxpayers will have less revenue. So it does have an impact, but we're not going to get into that. I think your point on tolling is really your main point, and the sale of this highway in perpetuity is what you're really after in terms of your concern. Am I correct?

Mr Leonhardt: As well as the overall question of, where's the planning for the future?

Mr Cordiano: Transportation planning, yes. Thank you.

Mr Pouliot: It's a renewed pleasure: no less than the most distinguished, well-researched representative of 1.7 million motorists, be it by way of universal programs that your worthy association provides, ie, off-road assistance.

First let me correct Mr Baird. I would advise in terms of time management that he should, with respect, as a first-time member, have better things to do with his time than to recycle or reel off or peel off old Hansards or recycle old press releases by a now redundant former minister.

More importantly perhaps, you've mentioned that if you set the tone with Highway 407, this government could get perhaps prolific, promiscuous. We could be facing a serial privatizer, that what is good for the 407 will become the norm. Certainly that point was well taken. We shall be on guard.

Another point that was quite well taken is you've mentioned that if you were a shareholder you would perhaps, because it would be profit-motivated — nothing wrong with that. It's the essence of our system, providing there is competition. They called the 401 competition. It could lead us to, for instance, users being the most fortunate, like people who drive a Mercedes-Benz or a BMW, and the rest of us would be left paralyzed on the 401 as the only alternative.

You've also mentioned perpetuity, that there's really no hope here. When all is said and done, these people with their new-found friends, this arrangement, this ménage, will result in excessive tolls being charged for as far as we can see. There's no way out of this ménage à deux. Is that what your membership fears, that what you have here is this kind of liaison of convenience and that with those people you say little if you're a motorist but la pecunia is that you pay, pay and pay? I fear this. Do you share that sentiment?

1050

Mr Leonhardt: I think, Mr Pouliot, that would not be a fair characterization of what our members feel. I seem to have walked into what turns out to be a very partisan snakepit here, all in due fun, but our job is neither to prop up nor destroy the government. When there is something we agree with, like some of the truck safety and graduated licensing and drunk driving things, we're the first people to stand up there on the front page of the newspaper and say, "This is great."

When there's something such as the transportation planning that hasn't gone into this and the tolls being sent to perpetuity, we're going to come down very strongly on behalf of our members and say very clearly, "This is not acceptable." If the government wants to build a 407 extension — everyone in this room wants it, we want it, and the people from the various delegations, municipal delegations affected, want it — that doesn't mean we need Bill 70 and it doesn't mean we need tolls past the stage of construction.

Again, we were not thrilled with what happened in terms of the original agreement, no, but we accepted it. We recognized that was our option, and if the government wanted to proceed with the extensions along that fashion, and it has that option, we would again not be thrilled about it, but we would accept it.

Mr Pouliot: Mr Leonhardt, I'm not known to overreact or to exaggerate or to "stretch a point" to illustrate. If there is such terminology, I'm not one who catastrophizes. I don't do that. I speak candidly and honestly, and I know you do too. Hence my question: 1.7 million people — there are many in the same household or more than one, I assume, in the majority of cases. Those people have been surveyed. Are they saying they are proponents, that they would tacitly, if not readily, support the extension of Highway 407 under the present system, which is limited tolls, as you wish, with a commitment that once it is paid for you take it off the table and then there is no longer a fee for usage?

Because here we have a commitment — I think everyone says, the three parties here, that they realize you need to ease the congestion, you need to extend Highway 407, but the difference is in the financing. I suspect that a cynic would say once they grease the track, la payola, they will have to pay for it and who is going to pay? It's going to be us. We've already established in the financing that it's going to cost them \$15 million to \$20 million per annum right off the bat because private financing is 75 basis points to 100 basis points higher than government financing, so something is going to have to come out in the wash.

Do you fear the members of your association, your league, those people in their vehicles, going to earn a living, responding to services and emergencies, will be left — we're going to have a head count here and those people are responsible but they couldn't care less because of ABC partner and friend and acquaintance.

The Chair: Answer, please.

Mr Pouliot: Do you fear that, that there will be a sort of — not a revolt, but certainly people will say —

Mr Leonhardt: I'm not sure which question.

Mr Pouliot: Any one will do.

Mr Leonhardt: I'm not an economist and we haven't done an economic study of what the trade-offs are between the advantages and the disadvantages of the private sector as far as securing financing.

A revolution: What's a revolution? We're Canadians and the way we revolt usually is to stay away. I think that's what is going to happen to the extent that people feel they can. Again, as the other roads get choked more and more in gridlock, our tolerance for tolls as individuals will go up. We will see: "This is a half hour of my time. No, this becomes an hour of my time. Maybe it's worth it for an hour of my time."

The problem is that, yes, and it has been noted, the government has the right in the legislation to regulate the tolls — not the service charges, which are what really kill people right now, but again, that is all going to be written into a contract. Some people around this table have been in business. Nobody in business is going to just sign a blank cheque to someone else — a government, an individual, an association — to control their revenue stream 100%.

The Chair: Thank you very much, Mr Leonhardt, for coming before us this morning. We appreciate your input into this bill.

Mr Hastings: I would ask for clarification from Mr Pouliot. Perhaps later on he could describe for us what he meant by a "serial privatizer," whether that would be rapacious, criminal or innocent in intent.

Mr Pouliot: No. In Oxford and Webster's, it comes under "habitual." It's a synonym.

TOWN OF MARKHAM

The Chair: I now call representatives from the corporation of the town of Markham. Mr Landon, welcome. Please make yourself comfortable. As I'm sure you know, you have 30 minutes' presentation time. Hopefully, there'll be time for questions.

Mr Gord Landon: Thank you very much for hearing me. I believe I've circulated material to each of the members, a report that was done for the town of Markham.

First of all, I'd like to say that I think the 407 is the best thing that's ever happened. I had to be over at Jane Street this morning by quarter after 8, and it took me exactly 22 minutes from McCowan over to Jane Street. It's really pleasurable. I had a meeting with Alan Tonks there this morning. It's very productive.

We had Minister Rob Sampson and Minister Tsubouchi come up and explain to us a little bit about Bill 70. I apologize if I'm not 100% up on it. But what I'd like to talk about this morning are some of the problems we experienced with the building of the central section, and I hope that in the privatization bill we can address some of these.

One of the problems we experienced was that when the central section was built — specifically, my comments will be about the region of York and the town of Markham — there was a deletion of an interchange at Woodbine Avenue. I asked Minister Sampson and Minister Tsubouchi to drive that the other day. There are 40,000 cars that use Woodbine Avenue. I believe the reason the interchange was deleted was a cost consideration.

What it has done — and it's symptomatic of a problem that this kind of construction can be for a municipality — is that it has meant that anyone in the 40,000 cars that use Woodbine who wants to go westbound on 407 has to either go to Warden or to Leslie. What happens then, of course, is that the intersection of Woodbine and Highway 7 and the whole traffic pattern in the area of Highway 7 have become very congested. It's made it so we have to do some road improvements. We have a very busy business area in that area.

What concerns me about the privatization is that there's no economic incentive for an individual purchasing the central section to build that interchange. The motorists can still get on to the 407 by going to Leslie or going to Warden. I don't think it's going to bother the purchasers so much that they would want to spend the money that's necessary to build the interchange at Woodbine.

When I met with Minister Sampson he indicated to me that he would try to put some warrant information into the privatization bill so there'd be something other than an economic incentive. I think any private owner would look at it and say, "If I was going to build an interchange there, I probably couldn't justify it economically, because people still have access to the other ones." But what it does is offload a lot of the road costs back to the region or the municipality, which I don't think is what was intended. That's one of the things that has concerned us.

Another is that we have a number of people who are affected by noise attenuation issues. If you drive the 407 in the area, you'll see that what we've had to do in the case of McCowan to Highway 48 right now is build a very substantial berm. It was done in coordination with the Ontario Realty Corp. The berm is on their land. That's the first time that's ever happened. But what concerns us now is that there's going to be an extension.

We want the extension. I want to make that clear. We're not here opposing what you're doing; we think it's excellent. We want the extension eastbound, but we have some built-up residential areas there that are going to suffer from noise again. There seems to be a philosophy that that's not a concern of the province or the people who are building the highway. It wasn't when CHIC built it. It's thrown back on the hands of the region or the municipality again. There are substantial costs. The berm I'm talking about between McCowan and 48 was \$1.5 million. Fortunately, a developer in that area was building homes, and we were able to incorporate that into development costs for that area. But the area east of that will not be in the same situation. So the homeowners will experience noise and there'll be no way of attenuating those concerns.

1100

The third problem we experienced when the central section was built was that there were design changes made without regard for, again, adjacent lands or road systems. I'll give you an example: the interchange that's been done on Kennedy Avenue. It was originally an underpass and it went to an overpass. There was all kinds of land acquisition that had to be done in there, which has still not been resolved. It disrupted a number of businesses there. I think what happened there was that the cheaper way for CHIC to construct that was the way they did it and the way it was designed, and they didn't take into account the concerns of the municipality or the region.

The other thing that happened to us as well is that we tried to be forward-thinking as the 407 was built. We knew we would need some kind of connection with the 407, or an ability to get under it or over it, at Birchmount and Rodick Road and Cedar Avenue. We were forced to have CHIC build those underpasses because they were the only ones with the right to do it. Based on other estimates that we were able to get from private contractors, we think we paid an exorbitant amount of money for them to do that construction. In that case, we're talking about an underpass we had to pay for. It was smart to do it at the time the 407 was built. We don't need it yet, but we will need it in the future, but we had to pay a very exorbitant amount to get that construction done.

Those are the problems we see that occurred with the existing central section.

I mentioned earlier that we're very interested in the extension. We did talk to Minister Sampson about it at the time he was there. We have lands which you people have sold to a developer in our town, the Law Development Group, and we're developing a lovely community called Cornet at the eastern end of Markham. If you've been there recently, it's a great place. It's neo-traditional design. It's something we're proud of, something that's been recognized across North America. But that particular development has a cap on it. It can only go to about 2,000 units out of 11,000 units and then it'll have to stop, because the extension to 407 has not been done and the traffic considerations in the area cannot be addressed.

I don't know the details, but I would assume that the province has some kind of agreement with that developer that he has to pay out based on the development of that community. He won't be able to pay because he won't be able to construct, and you won't get your money. So I think there's a very significant reason the province would want to see that eastern extension done.

The other problem we have in the east end is that we have traffic gridlock. It's not all our own doing. We're getting a lot of traffic from Durham; we're getting a lot of traffic from the northern part of the region. We badly need that eastern extension, and we don't think it's going to be effective until you get it extended back to the 401. We encourage you, in your privatization of this, to make sure there's a priority in extending that eastern section, and quickly. We don't want it given second priority to the western extension, by the way. Minister Sampson

indicated to us that under the privatization, if the private contractors bidding on this are willing to accept the extensions, there would be equal consideration given to both the eastern and western extension. We'd also like you come back and consider putting the interchange in it at 407 in that privatization bill, because we think it's so important.

The other thing we think you need to build into it is some kind of public accountability with the private purchaser of Highway 407, because we're running into these kinds of problems which impact on our local roads and local communities and we don't seem to have a mechanism to be able to deal with them. We're not concerned that you're privatizing it; we're concerned that there be some mechanism built in for consultation between the municipalities and the regions, but also that there's a dispute mechanism so that if we get into a real battle there's some way we can resolve these issues.

That's really the extent of my concerns. I'm chairman of the transportation committee for Markham and I'm also vice-chairman of the transportation committee for York region, so I think I reflect both of those. I think you only have correspondence this morning from the town of Markham, which is the committee I chair in Markham, but certainly I'd be happy to address any other questions you might have with regard to privatization that I can answer for you.

The Chair: Thank you very much. We have about six minutes for questions from each caucus. We'll begin with the Liberal caucus, with Mr Sergio.

Mr Sergio: Mr Landon, thank you for coming and making a presentation. It's always nice to see local politicians coming in support of their community and their people.

You have a nice long list here of the conditions you would like to see included in this possible agreement between the provincial government and whoever may be the eventual owner and operator. You raise a number of good points, good questions here. The problem is that the way the legislation is proposed, it is giving practically carte blanche to the new owner, if you will, because I think that's what it becomes: It's not somebody who just has a lease on a piece of land; I think they will do whatever they want.

In the absence of any legislative power within the act, what would happen, supposing your conditions were to be included — and I have to say that some of them need to be included and some are very onerous — but supposing they were. Then, as you just mentioned, say the municipality has a discrepancy, with ramp construction or noise attenuation or something. What would happen if this discrepancy became a real problem between the local municipality, feeling very strongly about whatever issue, and a very obstinate owner? Would we see the ramp close, the highway close, at that particular location?

The province now is out; they are not holding any responsibility any longer. They don't reserve any power for themselves within this legislation that they could come one day and say: "Enough is enough. You're going to do

that." We don't have any say any more. It's going to be left between you, the municipalities, and the owner-operator. In what position are we going to place your movers of goods and services and your residential people who travel from one area to the other? Do you have a concern with respect to that?

Mr Landon: I thought the purpose of this hearing today is that we're here to try to have some input into what this legislation is going to be. One of the things that Minister Sampson did say he would consider was a warrant in there which would dictate when an interchange had to be built on a certain road. I know you can't specifically put Woodbine in there, but if warrants were met, that would be included in there. I think noise attenuation is something that has to be built in there. That has to be of concern. It's a concern on every other highway we have in this province.

The dispute mechanism may be difficult if it's just actually sold and there's no involvement of the province whatsoever, but I do believe there has to be something there. I don't think it's a function of closing a ramp or something like that; I think it's a business arrangement. If there is a dispute, there has to be some way that can be done. But I don't think it should be up to the municipalities to sue them. There has to be some mechanism or something put in place by the province to be able to mediate those kinds of problems that would come up. A private owner may not disregard us as much as CHIC did, but there have been some real problems. There was a total lack of respect for our own roads and our own regions and our own municipalities when the original 407 was built. That's why we're here this morning. I'm hoping, through the presentations you're receiving over these few days, that these concerns will be built into the privatization. That's why we're here. If they're not, we're wasting our time.

1110

Mr Sergio: On page 2 of the bill, this is what it says with respect to transfer from the provincial government to the transferee: "'transfer' includes convey, sell, grant, transfer, lease, license, charge, mortgage, encumber, grant an easement, assign and in any other way deal with or dispose of all or part of...the crown's...interest in assets comprising or relating to Highway 407."

That's scary. It means that now the government is willing to sell to ABC Corp out there, and then in turn they can remortgage to the hilt, they can resell, they can re-lease, and the corporation, which is the province of Ontario on behalf of its citizens, doesn't have a say in how this will be conducted in the future. Should we retain ultimately, as the protectors of the people's interest, some say as to how this is going to be done in the future?

Mr Landon: I don't think we've had any say up to this point. I don't think we had any say with CHIC about what happened. What we are asking, and I'll restate it, is that you consider some kind of mechanism where there is some consultation. I don't really care if it's private or CHIC or the province or MTO or who it is, as long as there's some

consultation and some way to deal with disputes that come up.

Mr Sergio: You would like to see a mechanism included in the legislation which would permit exactly what you're requesting?

Mr Landon: Right.

Mr Pouliot: Good morning, and welcome. Would you please convey, on behalf of the members present, our regards to Mr Cousins.

Mr Landon: I sure will.

Mr Pouliot: He served in the assembly for a number of years, very close to 15 years, and we grew very fond of him and certainly did appreciate his contributions.

Mr Landon: Don would have been here this morning; he was tied up in another matter.

Mr Pouliot: Indeed.

I did some reminiscing on account of your presentation. No mea culpas, but when you envisage a project of this magnitude, you must commit to a timetable, you must commit to expedience. But by the same token, you have to adhere to very stringent standards. Some things you can't compromise.

You mentioned the local problems, or wishes, if you want. The interchange at Woodbine: It's not very lucrative or encouraging for an entrepreneur to build interchanges; nor is it encouraging for a politician, in her or his riding, to contemplate the transportation contract to fix a bridge. Especially before the writs are issued, some members opposite may not wish to see money allocated to fix bridges. We have 23,000 kilometres of highways in Ontario. We have roughly 3,000 bridges. You must go with blacktop from point A to point B, as thin and as long and as wide as possible. That's where the project takes life. I'm concerned, and I share your concern, in terms of the private entrepreneur meeting standards — and I'm not imputing motives; they're all good people. They will meet the standards, because there shall be no compromise if people are vigilant.

The thing is, I wonder about a partnership. Where is it written — because we don't know the request for proposals. This is our dilemma here. We all want to extend Highway 407, in my understanding of it, but we don't know how it's going to be done. They say: "Trust us. Wait and wait." Well, we want to do this, but you're going to have to show me.

They talk about noise barriers, noise attenuation, like you've said. Where are the criteria? They talk about expropriation. The private sector cannot purchase land. It is not their duty under the statute. They don't do those things. So you have a tacit partnership. We would like to see all those defined, and we're asking the same question: When you say by 1999 or by the year 2000, superimpose, on the request for proposal, a timetable. Would you like to see that?

Mr Landon: Of course.

Mr Pouliot: So we're together. That's exactly what we would like to see as well.

I don't wish to be political — I'll leave that to others — but it's only commonsensical, it's only doing good

business. If you were to conduct your personal affairs or the affairs of your corporation in a fashion, and if you would wish, by that philosophy, to extend that to government, would you not conduct due diligence? We don't even have access, because there's sort of a veil of secrecy: "There's only you and I here, sir, and if you promise not to tell anyone, it will be our affair. Maybe you get a big piece of the pie." I don't know.

Why don't we have the privatization review, which we all paid for as taxpayers, in broad daylight? Why don't we have a copy of it? They have it, but it's kept behind closed doors. Why don't we have a copy of the request for proposals? What are the minute details, so we can read and make recommendations? That's what your brief says, and I'm very pleased that you share that. They're exactly the questions we have. They're straightforward. There's nothing hidden here. It's for the benefit of the taxpayers, who, we suspect, now that they don't want to tell us everything, are about to be soaked. I know you can't say this, sir. You're too much of a gentleman. I used to be like you 15 years ago.

Mr Landon: I don't think there was a specific question there, but I will say that one of the things that encourages me is that I have been talking to one of the bidders for this project and it's his feeling that unless this thing is completed quickly, it won't be a viable bypass to Toronto and it won't be economically feasible. He tells me that the first thing he would do, if he were the successful purchaser, would be to build the east and west segments, because that's the only way that this thing will become a viable operation.

Mr Sergio: Should they be paying taxes?

The Chair: Sorry, no. We're moving to the government caucus for questions.

Mr Galt: Thank you for your presentation and for being here this morning. I'd like to follow up on Mr Sergio's question. He was anxious about taxes, and certainly Mr Cordiano earlier was really pushing the fact, demanding that taxes be paid to municipalities. I'm sure you as a councillor would just love to get those taxes.

Mr Landon: Of course.

Mr Galt: He posed the question to the minister, and the minister explained that the crown still owns the land and therefore, as for any other highway, taxes will not be transferred, and he went on to explain the level playing field with other roads throughout Ontario. I think he has a good question — I don't quibble with him — but I'm trying to draw a comparison here as I think about his concern, his questions. Having sat on council in Northumberland — and I'm thrilled with your push to get it to the east. I'd just love the 407 to have a connection with the 401. It would be very advantageous, not only for me personally, but for people in my riding and industry.

Thinking about the area and serving on council, with the railroads going across the jurisdiction, yes, we get taxes for those railroads, but we also, as a municipality, pay dearly for the costs of the crossing. In the crossing, it would pay for the electronic gizmos, the signals and the flashing lights and all the rest. Drawing that comparison,

if you were to get the taxes for the highway going across, would you be happy, then, to pay for all the costs of the bridge and the entry and the exits and everything else to do with those cloverleaves, including installing the one that you're concerned about not having in Markham? It's a direct comparison.

1120

Mr Landon: It may well be. I have no idea whether taxes would be sufficient to do those kinds of changes. I'm not hung up on whether the province pays us taxes for the roadway. That doesn't matter. We've got cases now where the CRTC has just ruled on Bell telephone and said they don't have to pay us for easements any longer, and we just lost \$600,000. Payments in lieu of taxes, are never something that municipalities should consider are going to be there forever, when it's another level of government that controls them. But I have no idea what the taxes that would be generated there would be versus the capital costs of the changes that would be necessary. There's no question that we'd like more money to do more work on our roads, and any way we could get that, we'd appreciate it.

Mr Galt: It may not have been a totally fair question, because you don't have the figures, but with the railroads, I know our municipality would give up those taxes very freely, very quickly. I should point out that as it goes across Markham, you will be getting all the fines incurred for highway traffic violations out on 407, and that will be quite a revenue stream for you.

The other thing that I think is kind of interesting here is that the congestion we're trying to clear up with 407 is a result of the jobs being created by this government. We wouldn't have nearly the congestion if we hadn't created over 430,000 jobs in the last few years.

Mr Landon: Gee, and we thought we did that.

Mr Hastings: Councillor Landon, thanks for coming before us today, and please extend our appreciation to Mayor Cousens for all the hard work he's done. He was an excellent member for Markham when he was down here. He always voiced his concerns very solidly and rigorously.

Since you're head of transportation in the region of York and Markham generally, and you want to get the 407 project completed whichever bidder ends up purchasing the major asset of the infrastructure, is it your estimation that some of that urgency in the completion of both ends would reduce the wear and tear on the local road system in the town of Markham and surrounding areas, as well as increase the potential for getting product delivered from a lot of your high-tech manufacturers to the other parts of the greater Toronto region or into the United States? Do you see these as two primary benefits in terms of some of those local impacts you're having without the completion of the 407?

Mr Landon: Our businesses have told us that they don't use it because of the fact that it won't connect to the 401. It does now pretty well in the west end. In the east end it terminates. If I fly into Toronto I can find where I live now, because I can look down and see where that highway terminates. I don't know who in their right mind

would ever build a major highway that terminated in the middle of a community. The obvious thing is that it has to be extended and connected to the 401. Our businesses are telling us that as soon as that happens, they'll use it. There's no question they'll use it. They're not using it today but they'll use it if it's extended. That's why I think it has to become a true bypass.

The other benefit that I see is that we have — and I guess some of you members wouldn't know it — gridlock in the east end of Markham. We've done cordon counts, and the amount of traffic coming in from Durham today is just unbelievable. We don't have a road system at that end to handle it. We know, and you can see it today with the entrance at McCowan, that that traffic will get on to the 407 and get off our local roads, which will alleviate some of the gridlock we've got in the east end of the region.

Mr Hastings: Do you have any local engineering studies that show the wear-and-tear impacts on your local system as the current configuration of the 407 is, that you'd link with that gridlock around Woodbine Avenue and farther east? That was a point that Chair Savoline mentioned.

Mr Landon: We do have an engineering study that justifies the interchange and justifies another connection into the 407, and I can get that for you if you like. There's no question. If you drive in there today, you can even see that we're having to resurface Highway 7 because it has been so badly beat up since the 407 actually opened. There's no question. And it's absolutely impossible, at Woodbine and 7 today, to get through that intersection any more. It's just clogged up because of the fact that there's no interchange at Woodbine. There are definitely some studies I could get for you on that.

Mr Hastings: Knowing that Ministers Clement and Tsubouchi have gone and looked at that problem of the gridlock around Woodbine and the adverse impacts it has on the local, adjacent communities there, I'm sure the minister will take a good look at your suggestions, not only in your presentation but also of the regional chair of Halton, as to some mechanism for dealing with some of these impacts on the configuration of 407. Thank you for coming today.

The Chair: On that note, on behalf of all the members of the committee I thank you for coming before us this morning with your views and your suggestions on improving this bill.

REGIONAL MUNICIPALITY OF DURHAM

The Chair: I now call representatives of the regional municipality of Durham, please. Good morning, gentlemen, and welcome. Please introduce yourselves for the Hansard record.

Mr Roger Anderson: Thank you, Chair Elliott. My name is Roger Anderson. I'm the chairman of the region of Durham. To my right is Tony Prevedel, who works in the region's works department. To my left is Gene Chartier, who also works in the region's works department. They answer all when it comes to transportation. If I

can't, they will, and if it's not the right answer, you let me know and I'll get you the right answer.

Mr Sergio: He doesn't think so.

Mr Anderson: Well, after hearing the end of Markham's discussion, I think we're all on the same wavelength.

Chair Elliott and members of the standing committee, thank you for the opportunity to address you here today on what I feel is one of Durham region's most important issues: Highway 407. Durham has long supported the extension of Highway 407 through Durham. As a matter of fact, in 1976, Durham region's first official plan, we marked the 407 on our official plan.

Over many years, we've worked with the province of Ontario to bring this important project to fruition. With Bill 70, we now see the light at the end of the tunnel. This morning I wish to lend my support to the proposed bill, as it provides the much-needed mechanism and the approach to proceed with Highway 407 into and through Durham region. My comments will illustrate why Durham region lends its support to the project by demonstrating how this extension will contribute significantly to the growth and economic prosperity of our community.

I will also be noting concerns we have with the proposed legislation as it stands today, primarily as it relates to commitments to the timing and magnitude of the future extension. You've all received copies of my presentation entitled Highway 407: Paving the Way for the Future Growth and Economic Prosperity of Durham Region.

Durham is one of Canada's fastest-growing communities. Our population grew by over 40% in the last 10 years as our local construction trade built more than 45,000 new housing units to accommodate the influx of residential development.

1130

Durham is also a vibrant commercial and industrial market and home to Canada's largest automobile manufacturer, that being General Motors. As many in this room know, the auto industry is arguably the most important industry sector in Canada, let alone the greater Toronto area, and the source of thousands of jobs that generate a considerable amount of direct and indirect economic activity. In fact, more than 25,000 of Durham's jobs are related in some way to the auto industry, making it by far the single most significant sector in the region's economy. Prospects for future population and employment growth are also bright, with Durham expected to reach nearly one million people and 500,000 jobs by the year 2021. With opportunities for growth in the greater Toronto area diminishing, Durham will accommodate an increasing share of the future growth in the GTA. The region is well positioned to capture this future growth because of its reasonable housing and land prices, its availability of serviced land and its skilled labour force. However, we are concerned that this needed investment may be directed elsewhere in the GTA if our transportation access is not improved.

We know that a positive, and in many cases direct, relationship exists between investments in transportation

infrastructure, locational patterns, and hence growth and economic development. This fact was acknowledged by the Honourable Ernie Eves in the 1998 budget speech with his statement, "A vibrant economy depends on high-quality, high-capacity transportation networks." As such, the region's continued growth and economic prosperity will be dependent on having a safe and efficient transportation system for the movement of both passengers and goods.

Major improvements and expansions of the region's transportation system will be needed to accommodate the planned growth contemplated by the region of Durham and approved in our regional official plan. The most important of these improvements, it goes without saying, is the extension of Highway 407 east to Highway 35/115 and the two connections to Highway 401. The freeway is fast becoming the next main element of the GTA urban structure, linking together the rapidly developing regions of Halton, Peel, York and Durham, and linking us all to the city of Toronto and the GTA and, most importantly, our neighbours to the south, the United States. Early construction of the Highway 407 extension into Durham would help the region and the GTA reach their growth objectives and improve connections to the wider markets of both Ontario and the United States.

The construction of Highway 407 and its connections to Highway 401 are needed to structure growth, stimulate development and serve the existing and future travel demands of residents and businesses within Durham, the rest of the GTA and the province of Ontario. Early implementation will help in several ways.

(1) It will address the critical need to provide additional road capacity at the Toronto-York-Durham boundary. Durham — and, as a result, eastern Ontario — currently has a total of only 24 lanes of road access across the Toronto boundary, and only four lanes into the region of York. By comparison, the regions of York and Peel have 190 and 104 lanes of access respectively. This is across the Toronto boundary.

(2) It will provide a needed road connection where limited opportunities for their implementation exist. Prospects of future roadway improvements at the region's west boundary, as you all know, are extremely limited, given the province's objective of protecting the Rouge Valley, which we in Durham don't totally disagree with.

(3) It will provide an alternative to Highway 401. While Highway 401 currently plays an extremely important role in the movement of people and goods between the region and other locations within the GTA, you all know how congested it is and how it's subject to considerable delays.

(4) It will also complete the planned freeway network. Construction of this vital link will help facilitate the structured growth in population and employment contemplated in the region's official plan and complete Durham's planned transportation network.

(5) It will provide a more reliable access required for just-in-time operations and improved productivity. Major industries, specifically General Motors, located within

Durham need proper and efficient roadway access to carry on business and remain competitive, especially as the proportion of shipments by trucks continues to climb.

(6) It will provide access to the proposed developments at Seaton — provincially owned land — the Pickering Airport and north Oshawa. Access to these planned growth areas would be enhanced and may help stimulate early and more intensive development.

(7) It will maximize the return on investment in other infrastructure. Durham region has invested a considerable sum of public funds in the servicing of lands identified for future growth which have yet to develop due to the transportation and access challenges.

We see Bill 70 as an opportunity to address these needs as it realizes the extension of Highway 407 into Durham region. The region of Durham supports the easterly extension of Highway 407 all the way through to 35/115 and two high-speed connectors to the 401, and views the construction of these works as our highest freeway-improvement priority.

We have repeatedly requested the province to proceed expeditiously with this important project, and as recently, again, as November 18, 1998. We recognize that in today's world, public-private partnerships are an innovative and necessary approach to the construction and operation of key infrastructure, including Highway 407. To this end, we concur with the province's initiative to seek an alternative approach to the financing and ownership of this unique toll highway as proposed by Bill 70. This draft legislation provides a mechanism to engage the creativity and resources of the private sector, while maintaining the public's interest in this important capital asset.

Bill 70 in its current form provides two significant benefits to the region of Durham. First, the proposed legislation would provide a mechanism to ensure the private sector owner proceeds with the expansion and/or extension of Highway 407, which we anticipate will include the works in Durham region. Second, it would reactivate the currently suspended environmental assessment study for the easterly extension of Highway 407 beyond Brock Road and Highway 7. The absence of a final decision on the need, justification and location of the facility and its connections to Highway 401 is a cause of concern to a number of parties in Durham region. The environmental assessment study provides the appropriate and ideal venue to address these matters in a comprehensive and consistent manner.

Although we wish to express our support for Bill 70, which will, if enacted, provide an excellent opportunity to realize the extension of Highway 407 into Durham, we do have some concerns with the proposed legislation.

We recognize that the intent of the draft legislation is to provide an opportunity for the private sector to become involved in the delivery of 407 and to preserve the flexibility required to achieve the most mutually beneficial agreement to all parties. We are concerned, however, that Bill 70, as it currently reads, does not provide sufficient guarantees for the partial and full extensions of Highway

407 to east of Brock Road and through to Highway 35/115, respectively.

Specifically, subsection 36(1) states, "The owner shall expand and extend Highway 407 in accordance with the terms and conditions set out in an agreement to be entered into between the owner and the minister for privatization." Until the terms of this agreement are specified, the timing and magnitude of any future extensions into Durham are not known.

This is a major concern to us. Given the tremendous need for the construction of Highway 407 to at least Brock Road and Highway 7 in the near term, we would encourage the provincial government to ensure this partial extension forms part of the aforementioned agreement, and that you consider proceeding with its implementation at the earliest possible date. A commitment on the timing of construction is also very much encouraged.

For the balance of Highway 407 to 35/115 and the connecting links to the 401, we would ask and encourage you to reactivate the environmental assessment study for these works at your earliest opportunity. Completion of the study would help to address several outstanding issues and concerns, and allow the project to proceed to construction.

In conclusion, the region of Durham strongly supports the initiatives aimed at advancing the construction of the 407 farther east. We believe the Highway 407 extension benefits not only Durham region but the entire GTA, given the integrated nature of the urban area and Durham's role as its eastern gateway.

1140

Bill 70, known as the Highway 407 Act, has the potential to significantly advance the extension of 407 into Durham. However, we would encourage the province to proceed with the construction of Highway 407's partial extension to Brock Road and Highway 7 immediately. We would also recommend that the agreement with the private sector owner articulate a plan to proceed with the full extension of Highway 407 to Highway 35/115 and the connecting links with Highway 401 at its earliest opportunity.

Members of the committee, a commitment by the province of Ontario to the timing and magnitude of these improvements is also requested and vital to the economic benefit of all regions within Durham, the GTA and the city of Toronto.

Thank you very much for the opportunity to address you, Chair Elliott. If we can answer any questions that can convince you to go east — you know that old saying, "Go west." Well, trust me, east is nice. When you go to work in the morning, you're never driving into the sun; the sun's always at your back. It's sort of nice. You don't need sunglasses. You actually get to see the view and it's very pleasant.

The Chair: Thank you very much. We have time for about five minutes of questions from each caucus, and we'll begin with the NDP caucus.

Mr Pouliot: Roger, if I may, it's always a renewed pleasure. Throughout the years, you have elevated the vulgar trade of lobbying to the most honourable of

professions. You also dress very well your presentation — as exhibit A, this is the nicest we've had — and what's inside your presentation does it justice indeed.

Mr Anderson: Just so you know, it was all in-house.

Mr Pouliot: I marvel at your ability to want a project so very much and to wrap it up with a most acceptable presentation.

I've known you for years, and you're very consistent and predictable therefore — all positive. You preach for your parish. You come here and you say, "These are the benefits we wish to have." There's no question that everyone agrees that the 407 should be expanded. But then you tell us: "Start with my parish. Start with my street."

You remind me of when I was the mayor for 10 years of Manitouwadge, "cave of the Great Spirit," way up there in the north. People used to call me, because it snows a lot — trust me, it does; you know that — and used to say, "How come, Gilles, my street is always the last one to be done?" Well, there could only be one first one or one last one.

Here's the analogy: We've had several presenters, and we'll have some more, and people say, "This part of the project is unique, and I wish you would start here." I'm sure the engineers will have a field day, and hopefully they'll be able to accommodate each and every one. Some people wish to have the project so badly that they're almost willing to forgo environmental assessment and so forth.

I have a question. With your expertise and your background and your reputation for equilibrium, as being extremely well balanced, if someone would give the specification for 407 for the purpose of environmental assessment studies, would it not be preferable that this be done first? Then the environmental assessment would come back and then you could issue the contract. You could sell it after, if this is the intention. Would you not like to satisfy everyone with a thorough study environmentally?

Mr Anderson: First of all, I don't know if I should thank you for your original comments or hire you as my campaign manager.

Mr Pouliot: You could do worse, Roger.

Mr Anderson: You're right, Gilles.

Mr Pouliot: And better, too.

Mr Anderson: The next time I'm here as vice-president of AMO, I'll remember that conversation.

I say to you, in all due respect, the environmental assessment on the 407 from McCowan Road through to Highway 7 and Brock Road is done, is complete, is finalized, and it's my understanding that Minister Clement has already commenced the design. So that environmental process is complete. We're prepared to follow the process thoroughly and in due course on the extension of the 407 from Brock Road and Highway 7 through to 35 and 115, follow the environmental assessment process completely and thoroughly with a large amount of public consultation.

The fact is, not 12 minutes ago the councillor from Markham was complaining about the congestion at

McCowan Road. That's Durham traffic. I was there last night trying to get on it. That's the congestion.

Durham region, the first phase, is complete. They just have to put the shovel in the ground.

Mr Pouliot: Thank you, Roger. Some will say that assessments lately have become so perfunctory as to be rendered almost meaningless. We established beyond doubt this morning that the venue, the style, the approach, the methodology that has been chosen by the government to build the extension of Highway 407, because of the private sector's inability to borrow at the same rate as the public sector — the Globe and Mail said 75 to 100 basis points. On a project of \$1.5 billion, it's \$15 to \$20 million a year on financing costs alone.

Are you afraid that your constituents will be burdened with an unduly high toll, that they'll pay an awful lot more than they should to use the highway? The sale is only for one thing. We have a letter from the minister that says they're going to sell Highway 407, the existing part, and they're going to take the money to pay against the deficit, so it's pretty well a last resort. Aren't you afraid of the financing part of it?

Mr Anderson: In all due respect, no, not at all. Believe it or not, I have absolute faith in any government that's duly elected to make the right decisions for the people it represents; I don't care what party. To sell something, there's a process, and I would suggest that the process is that you're going to make the best decision that you feel is right, an informed decision. I would hope the operations of this Legislature are no different from the operations of mine. We don't give anything for nothing; we don't get anything for nothing.

Mr Pouliot: The perfect marriage.

Mr Anderson: One would hope. I'm hoping we don't get divorced here.

The Chair: We have three government members who wish to ask questions: Dr Galt, Mr Spina and Mr Hastings.

Mr Galt: Thank you for your presentation. Being from Northumberland, I certainly support your concern for the extension to the east. We would certainly look forward to it. I get caught in the same congestion that you get caught in. We, as a government, fully accept the responsibility of having created that congestion with over 430,000 net new jobs. These are people getting to and from work who are creating that congestion. If those new jobs hadn't been created, we wouldn't have that congestion today, I'm sure.

I think you had an excellent comparison, on page 3, of the numbers of lanes coming into Toronto. We in the east are sort of on the weak end of the number of lanes coming into Toronto, you might say. The east really hasn't been found yet, and the glories of living east of Toronto. Maybe if we get these extra lanes, that would occur.

The question I have for you relates to a concern expressed by one of the members of this House from Durham — since that person isn't here I won't use the name — about the environmental assessment aspect of the extension. You've made reference to it on pages 5 and 6. Do you see this going across the Oak Ridges moraine? I'm

parliamentary assistant for environment and very concerned that this is followed properly. Do you see this as a big stumbling block or a big barrier to developing those extra lanes in the extension of 407?

1150

Mr Anderson: Mr Galt, I know the MPP you're speaking of. I have absolutely no concern whatsoever in regard to the extension of the 407 to 115 and 35, as long as the public consultation process and the environmental assessment process are followed to the letter of the law. I've been involved in many environmental assessments, and it's a co-operation of the public, governments and environmental groups getting together and finding solutions. I think through that process they will all be taken care of very well. The Oak Ridges moraine is as important to Durham region as the 407, because it really is the lifeblood of the environment. To damage it and hurt it in such a way that it wouldn't be beneficial to anybody and would hurt everyone else at the same time is not good business.

With all due respect to the MPP you're referring to, there is an environmental process. Your government and Mr Pouliot's government would never cross the line, ever. I've never met an environment minister who would bend the rules to approve a project, and I don't expect to see one in this House ever. I know that our public and the people in the Oak Ridges moraine will fight you tooth and nail if there's something wrong, and I would suggest that whoever the environment minister is should pay attention, because they know what they're talking about. But there are solutions, and that solution can only be done through the process.

Mr Spina: Thank you, gentlemen, for coming. I just wanted to share with you the experiences I have as the member for Brampton North. I can only give you positive testimony, with statistical data as long as my arm, from both Chairman Kolb and Mayor Robertson, whom you both know, as to the economic benefit and spinoff we have experienced as a result of highway infrastructure, Highway 410 specifically and now of course the 407.

By the way, Richard, I just want to say that if you're as diplomatic when you become president of AMO as you are today, I'll look forward to you having a great relationship with the provincial government of whatever stripe. I compliment you on that, sir.

I, like you, have a major automotive assembly plant, Chrysler, highly reliant on JIT. With smaller supplier companies spread all over, whether it's a Magna plant in Milton or Newmarket or Vaughan or wherever, and trying to access either of those major assembly places, there's no question that we value those investments in our community.

I think you were here early enough to hear some of the arguments back and forth regarding the taxation or even a PIL, payment in lieu, with respect to the land, which would continue to be owned by the government. Do you think the economic spinoff and the resultant taxes, development levies and charges that would be of benefit in terms of revenue to the region and the municipalities

probably far outweigh any PIL or taxation that you might receive off assessment from the highway once it's constructed?

Mr Anderson: I thought you might ask me that question. In fairness, and again with all due respect to the present government, we don't get any funding for roads any more. We don't get payments in lieu for Highway 7, we don't get payments in lieu for Highway 2, and we certainly don't get payments in lieu for Highway 401. As a matter of fact, we've come forward to the government with a proposal where we'll help pay for the widening and interchanges along the 401 as a joint venture. I never expected any taxes, any PILs. I would assume that if you sell this infrastructure to a private corporation, that corporation will pay business tax.

Mr Sergio: No.

Mr Anderson: Well, if it's a corporation and it makes money, it should pay business tax; that's another issue. But I didn't anticipate any PILs, I didn't anticipate any taxes. I did, in fairness, anticipate an easy flow of traffic from the east to the west of the GTA. That will be accomplished only with the 407.

Mr Cordiano: I think you've answered my question. I wanted to ask you how many businesses in your region are exempt from paying property tax or business tax.

Mr Anderson: Absolutely none. That's why I said that I think any business that makes money pays taxes. I own a business; I pay taxes.

Mr Cordiano: So why do you think it is that the government felt compelled to exempt the eventual purchaser of Highway 407 from paying property taxes? I'm shaking my head and saying, "Why would they do that?"

Mr Pouliot: The rich don't have to pay taxes.

Interjections.

Mr Cordiano: Madam Chair, I have the floor.

The Chair: Order. We're in a question-and-answer period. Please give our witnesses an opportunity to answer.

Mr Anderson: I'm going to plead some ignorance here, sir, because I'm not aware of the bill stipulating specifically that the purchaser of the 407 doesn't pay tax. If it does say that —

Mr Cordiano: Just for your information, it's in the act; it's in section 57.

Mr Anderson: Does it not say "municipal tax"?

Mr Cordiano: There's a compendium that says — let me just refer to this. "The Assessment Act is amended to provide a specific exemption with respect to real property taxation for Highway 407." That's in the compendium. I asked the minister that question this morning and he acknowledged that they would be exempt, so that's a fact.

Mr Anderson: Well, in fairness, if it's municipal tax for roadways, the government doesn't pay it, so I don't understand why the corporation that buys it would pay municipal property tax.

Mr Cordiano: What I'm looking at here is with respect to municipal property tax in the Assessment Act. It's the Assessment Act that's being referred to. The

minister couldn't specifically tell me what that refers to in terms of the new arrangement with property taxation. It's not clear to me, and the minister made it less clear when he answered.

Mr Anderson: I had no anticipation of receiving municipal property tax for the right of way of the road. I do expect a major benefit, though, from the economic development and the development charges that will come as a result of the construction of the road.

Mr Cordiano: I understand that, but Ontario Hydro pays those same taxes.

Mr Anderson: Yes.

Mr Cordiano: You do receive that revenue.

Mr Anderson: Payments in lieu, yes.

Mr Cordiano: And the railways do as well. So I just ask, in the interests of taxpayers and small businessmen, who have to pay their business tax and as a consequence are paying property tax with the new arrangements, why is it good for one and not for the other? That's the point you made. They're a business, they're a going concern, they're a corporation. They should pay the same tax. They should not be exempt.

Mr Anderson: Just so I'm clear, I didn't make that point. In fairness, I didn't. I have no issue with the tax whatsoever. I say that to you with all due respect. The benefit for all regions, the 905 and 416 regions, from the 407 will be enormous when you consider the potential development charges, economic growth, jobs and buildings that will be created in and around the 407. I can point to York region —

Mr Cordiano: No question about that. I don't think anyone would argue with that. The benefits are enormous. In fact, successive governments have planned for the 407 to be built. We built an interchange along the 400. Previous governments had expropriated land and set aside land. Everyone's in agreement with this. The point is, how do we get there? The point around this question is, what's a fair sale?

In addition to that, I personally and our party believe we should have the auditor of Ontario examine this deal after it's done to ensure that the public interest test is met, as a third-party oversight. I think the final successful bidder would want to make sure the public is reassured that this is a fair deal for the taxpayers. This is a complicated deal. It sets a new precedent if it is being sold. Therefore, we want to set the right precedent for future deliberations of any government. I guess you would agree with that.

Mr Anderson: That makes perfect common sense.

Mr Cordiano: Good. Thank you.

The Chair: On that point we will stop. Gentlemen, on behalf of the members of the committee, I thank you for coming before us this morning with your advice on this particular bill. It's greatly appreciated.

Colleagues, that concludes our presentations this morning. We'll recess and reconvene this afternoon at 1:30 in this room. Thank you.

The committee recessed from 1200 to 1338.

TOWN OF OAKVILLE

The Chair: Good afternoon, everyone. This afternoon, we look forward to our first presentation, from the corporation of the town of Oakville. Good afternoon, and welcome to the committee.

Ms Ann Mulvale: Thank you, Madam Chair and members of the committee. We're very pleased to have this opportunity to speak to you on a very important issue for our community. I speak on behalf of the corporation of the town of Oakville, and I thank you again for giving us this opportunity to talk to you about the desire of the town of Oakville to have the timely delivery of Highway 407 west extension through Oakville and Halton region.

It is my understanding that regional chairman Joyce Savoline of Halton appeared before you earlier today, supporting the quick passage of Bill 70 and the earliest possible construction of Highway 407 across the region. We are totally supportive of that initiative.

I also wish to note that I'm appearing before you with the full support of my council. We've been authorized by a resolution of that council passed on November 9 to be here.

There are four specific areas that I would like to address this afternoon relating to Bill 70, and we have supplied copies of this presentation for you: traffic congestion; economic development opportunities; Oakville's commitment to the 407 and our request to assist in the review of the request for proposals documentation preparation; and the establishment of a liaison committee, which we believe would ensure local communication.

First, traffic congestion. The Oakville transportation and transit study adopted by council in April 1996 indicated that the key transportation issue was overall mobility, a polite term for congestion. In surveys conducted for that study, the concerns of the residents related not only to existing problems but to potential future problems resulting from future development. Former Highway 5, now owned and operated by the region of Halton, has since 1993 operated at or beyond theoretical capacities across north Oakville.

Today's commuter faces queues in excess of two kilometres along this route during their morning and afternoon trips to and from home. Currently, two other transportation-related studies are underway: an Oakville study focusing on our midtown core and the need for additional capacity across the Queen Elizabeth; and the other, a regional study examining the corridors of former provincial highways 5 and 25 in Halton. Public meetings on these studies have generated large crowds. Clearly, we have heard the frustration of local residents with respect to traffic congestion and the lack of alternatives to the travelling public through Oakville.

The Queen Elizabeth Way is the sole provincial freeway through the town of Oakville, which exchanges traffic from multiple links, both east and west. From the west, two freeways, Highway 403 and the Queen Elizabeth, merge into a single QEW in Burlington and Oakville. From the east, three GTA freeways — Highway 403, 407 and the Queen Elizabeth — accept and deliver traffic. The two largest Halton region municipalities are

served solely by the QEW, and we face traffic conditions which may regularly be described as undesirable, overloaded and without alternatives. A single traffic accident on the Queen Elizabeth in Oakville or Burlington causes gridlock and systematic breakdown on both arterial and collector roads within the area of influence.

The addition of Highway 407 in the road network will increase capacities significantly at both Sixteen Mile Creek and Bronte Creek. The benefit in the construction of Highway 407's ability to reduce traffic congestion are obvious to Oakville; however, we also understand that Highway 407 is not a panacea and that the province must continue with its commitment to the widening of the QEW corridor to eight lanes after completion of Highway 407.

Economic development opportunities lost and gained: All of Oakville's industrial districts are focused on either the 403 or QEW corridor. The positioning of these employment lands along major freeways is not a coincidence. Business proponents recognize the value in highway exposure, minimizing trip distances, permitting just-in-time manufacturing opportunities, and also the value of an address within the GTA. Although we have been extremely fortunate to realize significant increases in industrial, office and service development within this corridor, there are red flags being waved by site location specialists, who voice concern over the ability of the QEW to provide the service level needed for their particular use.

Recently, our site plan committee gave approval for the construction of two office buildings central to the corridor. After proceeding through the full planning process, the plug was pulled on this project, with the specific reason being the extent of traffic congestion on the QEW. We are not able to determine the extent to which this type of decision is being made on a daily basis with respect to investing in our community. An opportunity was clearly lost.

Highway 407, planned in 1962, showed remarkable foresight on the part of the province in determining future transportation needs in the Golden Horseshoe area. The term GTA had not yet even been coined. Transportation Minister Tony Clement has indicated that Highway 407 has received tremendous acceptance by the driving public: "The extensions to Highway 407 will be an important boost to transportation infrastructure, will provide a competitive advantage for Ontario industry, and will ensure that GTA residents can get home to their families faster at the end of the day."

For the last decade, the local governments in Halton have addressed growth management and urban structure. Highway 407 in Oakville represents opportunities to be gained in ensuring the continued economic health of our community. A recently completed economic development strategy for Oakville points to Highway 407 as the most advantageous location in positioning the employment districts which will serve not only our residents but all those individuals seeking employment in a growing commuter shed.

We believe that there are opportunities to be gained with the construction of Highway 407, both in the short and long run. It must be stressed that the growth management strategies of the region of Halton and the future decisions of local councils with respect to development are dependent on the commitment to the completion of Highway 407. A commitment made by the province for the timely delivery of this highway should turn opportunities lost into those gained.

Oakville's commitment to Highway 407: All plans and maps of our community show a proposed Highway 407 across our northern boundary. From the designation of this corridor in 1962 through the county of Halton, to the identification of the corridor and intersections in the parkway belt plan in 1978, Oakville has relied on this future highway. In 1993, the government of Ontario committed that Highway 403, now 407, from Burlington to Oakville would be finished in its entirety by the end of 1998.

With that commitment, the town of Oakville initiated an environmental assessment to establish the need and location for the Neyagawa Boulevard extension north of Highway 5 to its intersection with the proposed Highway 407. This major arterial road, together with Trafalgar Road and Bronte Road, represents the three confirmed intersections with 407. In a letter dated August 19, 1993, from the then Minister of Transportation — I'm delighted to see you here today, sir —

Interjection: Aren't we all?

Ms Mulvale: Madam Chair, I'll try and pick this back up. We received a letter from the then minister that indicated that should Neyagawa Boulevard be in place at the time of Highway 403/407's construction, including connections to the municipal road system, both north and south of Highway 403, the minister would include the construction of the interchange ramps as part of the Highway 403 contract. We've attached the letter that was so signed to your packages today.

Oakville has completed an environmental assessment and subsequently constructed Neyagawa Boulevard north of Highway 5 and determined the final alignment for intersections with the proposed 407 highway. Oakville's cost, which can be directly attributed to our reliance on this commitment from the province of Ontario in 1993, is currently in excess of \$13 million. An additional \$1.5 million of future work related to this project is planned over the next four years. This is Oakville's commitment to the construction of Highway 407. I also wish to emphasize that we have forgone other capital needs in our community for the express purpose of making this significant investment in our future transportation system linkages with a provincial highway.

Open communication: As previously indicated, Oakville is in complete support of Highway 407 construction. All our plans to date have considered this highway as a part of the ultimate transportation system in and through our community. Development is already mustered along the south side of Dundas Street, and it is anticipated that lands which have been designated rural-

agricultural since the creation of Halton region shall be given a new designation of "urban area" in the year coming. As a result, Oakville intends to initiate a strategic options land use study to determine the appropriate employment lands, new planning districts and the systems to support them. There are numerous roads, subwatersheds and ownerships along the corridor. The current practice of the Ministry of Transportation in the case of provincial transportation works are controlled by law and procedure: the Public Service Works on Highways Act, and the Ministry of Transportation Corridor Control and Permit Procedures Manual "Encroachments and Utilities."

I understand that the region of Halton and the city of Burlington have also drawn this to your attention and have requested that the committee give consideration to the rewording of section 18 of Bill 70, which deals with the relationship between the provincial government and the private sector partner. The rewording would ensure that both the Public Service Works on Highways Act and the Ministry of Transportation Corridor Control and Permit Procedures Manual "Encroachments and Utilities" would apply to the management of the highway. Such a change to the bill would ensure a clear understanding of the responsibilities of the private sector partner in delivering this important asset.

1350

Finally, I would like to request that the committee recommend the creation of a liaison committee with representatives of the ministry, the private sector partner and local municipalities to provide an appropriate vehicle for communication during design and construction. Such a committee would ensure that information is readily available to any person who has an interest in the highway, and that issues which commonly arise may be dealt with expeditiously and with the knowledge of those affected.

In the same spirit of co-operation, we would like the opportunity, as would the city of Burlington and region of Halton, to provide direct input into the preparation of the request for proposal document to ensure a clear understanding of the scope and deliverables of this very important initiative.

On behalf of the council of the corporation of the town of Oakville, I wish to thank the committee for receiving this presentation. The completion of the western extension of Highway 407 is vitally important to residents and businesses in Oakville. While this project has been on the books for a number of years, the uncertainty of a completion time frame has limited our ability to plan for additional employment lands. We do not wish to have opportunities lost, but rather, look forward to the opportunities to be gained through the construction of this highway permitting Oakville, Halton, the GTA and Ontario to move forward with economic growth.

I would ask the government to give favourable consideration to our requests to provide direct input into the preparation of the request for proposals document and our offer of assistance in the establishment of a liaison com-

mittee to provide an essential vehicle of communication as a part of the project management.

Madam Chair, that concludes the text of my presentation, but in waiting to be called to present before you, my planning director, Ted Salisbury, reminded me of a commercial he saw as a person growing up, and some of you may remember. He believes it related to hydro; it had a multiplicity of plugs coming into sockets, and eventually the sockets are overloaded and they blow. If you can think of Oakville and our sister community of Burlington in that sense, we are overloaded in terms of vehicular traffic coming into this community. When we leave here, we will run into the beginning of rush hour. The QEW, by 3:45, and Highway 5 will start to be plugged. Because people know that, they get off on to Upper Middle Road and other roads and they filter through the residential areas, and we are in serious risk of major incidents.

On November 11 two years ago, we had an oil tanker overturn on an approach ramp to the QEW. It took more than a day to pump out and replace that vehicle. Oakville was exposed, this community, throughout that night had there been any incident, because our east-west traffic routes were totally plugged until after 10 o'clock that night.

We petition you earnestly to find a means to expeditiously build a highway, long promised, long overdue and desperately needed.

The Chair: Thank you very much. We have five minutes for questions from each caucus. We'll begin with the government caucus.

Mr Ted Chudleigh (Halton North): There's a tremendous amount of support for this highway being built. One of the ministers involved in it is sitting at the table. His questions have been quite mild today, really, given some of the history I've heard him use in the past.

Is there any opposition through that Halton area at all? I personally haven't heard of any. I've heard some references to the loss of farmland. It's been my impression that the soils in that area wouldn't be hotly fought after by the farming community; it's not the most productive area. In fact, the selection committee, way back in 1962 — is that when this started? — did a pretty good job of selecting a route through an area that would have a minimal amount of impact on the area. Could you comment on the opposition?

Ms Mulvale: It's my understanding that the lands are all assembled, that most of the land between the present urban envelope and this boundary of this envisaged highway are now, if they're farmed at all, tenant-farmed. Most of the family farms have long gone. It has been an assumption since the route and the announcements in the 1960s that this would happen, so the lands have been assembled.

The people of Oakville would be very interested in the process; they would want to know that we are good stewards of any environmental concerns there. I'm sure they'll pay attention to it, but I believe I am quite safe in saying that overwhelmingly this is supported and that we

are conversant with legislation which would address some of those other concerns.

Mr Chudleigh: I guess I'd just say that with the amount of opposition we generally get to change, this is one change that has universal support and is strongly held in most cases.

The Halton urban structural plan, which has been under development for some 10 years or longer —

Ms Mulvale: Ten years at least.

Mr Chudleigh: — and is coming to fruition, attests to the fact that Halton does its long-term planning very carefully and very well, as does this highway. I was wondering where the term "Neyagawa" came from.

Ms Mulvale: The roadway to the south is Neyagawa-Dorval. We are twinned with Dorval, Quebec, and we're also twinned with Neyagawa, Japan, which is in the prefect of Osaka.

Mr Chudleigh: Is this indeed the same road?

Ms Mulvale: It jogs.

Mr Chudleigh: But it connects with Dorval, so it'll be a direct link between the QE and that highway?

Ms Mulvale: Yes, it will.

Mr Chudleigh: Again, an example of excellent planning.

Ms Mulvale: Thank you.

The Chair: To the Liberal caucus, Mr Cordiano.

Mr Cordiano: Thank you for your presentation. I just have a few short, brief questions. Let me make one thing clear, though, before I ask you some questions. We're not here today to discuss whether a highway should be built or not. I think everyone agrees that the highway needs to be built. What we're here today to discuss is whether this highway should be privatized in the manner that's being contemplated by Bill 70.

To that end we, as the Liberal Party, are concerned that what has been put before us by way of Bill 70 does not effectively address the concerns that have come up in light of this; concerns around what will tolls be like after the private sector operator is able to determine what those tolls ought to be, with no oversight from the public whatsoever or the minister. It's not contemplated. We're also concerned with getting good value for money for the taxpayer. I've suggested, and I'll be introducing an amendment, that the auditor of Ontario examine this deal to ensure that. I think everyone would want to be certain that the public interest is served and that there's no question that will be done.

As well, I have concerns with the fact that the private sector operator will be exempted from paying property taxes as a result of Bill 70. I don't know how you feel about that, but Ontario Hydro pays for their right of way. The CN-CP pay for their right of way. So everyone is paying. I don't know if you know of any business in your community that is exempt from paying property taxes.

Ms Mulvale: If I could respond to the question this way, as a taxpayer, I respect and appreciate your interest in taxpayers' rights, but the taxpayers of my community are not being served well on a daily basis because a highway, long-promised and spoken to by your colleagues

who served in Halton during the Peterson administration, has yet to be built. You have to determine how you will deliver that.

I am just here to urge you — and we could dialogue with you at some other time on that; I'm sure our constituents probably would. But the message from my community is that from 1962 until 1998, the planning stage is far too long. Build the highway. If we had built the highway earlier, you wouldn't have had to wrestle with the issue of whether it should be privatized or not. It would have been built under the previous system, which was that they were built by the provincial government.

Mr Cordiano: And the Peterson government had allocated monies to do just that, as you'll recall, for the link.

Ms Mulvale: We had announcements from them, but we never saw the highway built, unfortunately.

Mr Cordiano: I'm sorry?

Ms Mulvale: We had announcements. I've been mayor for 10 years, so I was at those announcements. I'm not here to argue with you. I'm here to focus you, from my community's viewpoint, on the imperative, and that is to build it. You can wrestle at another forum on the means of building.

1400

Mr Cordiano: But if you will forgive me, this forum today is not to discuss whether the highway should be built or not. It will be built. We're all in favour of that. The forum today is really to address the concerns around privatization and whether we have a framework which will work, which will ensure that taxpayers are not at some future date overburdened because of the failure of this government to see that far ahead. That's why we're here today, to ensure that the public interest is served.

Ms Mulvale: I'm here speaking on behalf of my constituents, who are also taxpayers. Their interests daily are best served by the highway being built. They are totally frustrated. They do not want it to be delayed over some of the other issues. For them, the priority, with respect, is not whether it's private or public but when it will be built.

Mr Cordiano: I agree with you wholeheartedly. Again, I think that's a consideration for the minister and the government, to expedite that construction if they so choose. They could have chosen to do that before any consideration for privatization. Several years ago they could have decided to continue with the construction of the 407 quite separate and apart from privatization. So I don't see that is an issue, if you will forgive me.

The Chair: We're going to move now to Mr Pouliot.

Mr Pouliot: Thank you, Your Worship. We're honoured certainly, mes hommages, that Oakville, one of the most prosperous cities in Canada —

Ms Mulvale: We're normally in the top five and we choose emotionally to have the nomenclature of 10.

Mr Pouliot: That's right. You seem to be competing not in a field of one but in a field of five, so that's a pretty select group. We want to wish you continuous success.

Your Worship, it wasn't too long ago that your clerk administrator, I think it was — well, on a day like today, they were talking about business occupancy tax, one of the seven bills regarding property taxation. It's a puzzle extraordinaire, and I saw the pain, because like both of you, she is committed. I could see the dollars going out the back door with no alternative. So welcome.

Thank you for bringing a copy of one of my former letters. I sign far fewer letters nowadays, but nowadays I read them all, I can assure you.

Ms Mulvale: I'm heartbroken if you didn't read the letter that you signed to me.

Mr Pouliot: On a more serious note — I know you can't say that and I respect you and your opinion — they flirted with the concept of Highway 407. They could see just-in-time delivery, the need for expediency arising, but when it came time to ask the question vis-à-vis the 407, they shied away, both of them. We didn't. We put rocks in the box, shovels in the ground. We showed our commitment.

The letter that you talked about was in 1993. We were midway through our term. If it had not been for the interruption, courtesy of the taxpayers —

Interjection.

Mr Pouliot: — that's democracy; that's OK; that's how we got there in the first place — we would have completed it. The letter says so. You say, "Can we believe?" Of course you can believe. Look at the first segment. Look at the \$1 billion that has already been spent.

At the risk of being repetitious — and Mr Cordiano, my friend and colleague, has already said that — no one is opposed to building the 407. What we're opposed to is process. You see, we are seeking the same port, but we take different routes. We know, and there's perhaps nothing wrong with it, that they will sell at the first bid to get \$1 billion so they can reconcile the budget. It's their affair, but in doing so, our fear is that the users of the highway will be left on the hook. They will pay a little more, if not a lot more, and they will pay for a lot longer. Those are the questions on behalf of the consumers. The *raison d'être*, the *fait accompli* — it will happen — has already been established for the need and the expediency vis-à-vis the 407, so let there be no quarrel there.

Are you confident that your special part of Ontario will be addressed first in terms of the timetable? Do you wish to have the expansion start with Oakville?

Ms Mulvale: If there is difficulty — and I understand there are still some lands to be acquired on the easterly side. We are saying the westerly portion of this is ready to go. If you have to bid the contract in part or something, do not delay this link, because the land is assembled and the people are ready.

We believe in the wisdom of the people. They elected all of us. Democracy says the people are always right and so the party in power will make the decision on how to deliver this highway. With the greatest of respect, that is democracy, and the people will hold us accountable, as they interrupted your administration, if they're dissatisfied

with the decision made in terms of some of those financing details. We have confidence that you can proceed on the west. If you have to delay the east, we just ask you to please get on with it.

Mr Pouliot: We're all in favour of it, except process.

The Chair: On that note, on behalf of all the members of the committee, I thank you for taking the time to come to see us this afternoon. I know it's a long drive either way, but we do appreciate your advice today.

Ms Mulvale: Thank you again for your courtesy, Madam Chair.

ONTARIO TRUCKING ASSOCIATION

The Chair: I am now calling representatives of the Ontario Trucking Association, please. Good afternoon and welcome. We're glad you're with us this afternoon. Before you begin, would you please take a moment to introduce yourselves for the Hansard record. I'm sure you know you have 30 minutes of presentation time and hopefully time for questions as well.

Mr Michael Burke: My name is Michael Burke. I'm the manager of government relations with the Ontario Trucking Association. With me is Mr Stephen Laskowski, the assistant manager of government relations with OTA.

We're delighted to be here today. Some of you may be aware that going on at the present time is the annual OTA convention. Consequently our president, Mr Bradley, is unable to attend. However, when we found out that the previous Minister of Transportation was going to be here today, we thought we would find the time to come here in person and provide you with our comments and remarks.

I'd just like to begin by talking a little bit about OTA so that people have a clear understanding of who we are and who we represent in the industry. We're the largest trucking association in Canada and the third largest in North America. We're the only trucking association in Ontario that represents all sectors of the Ontario trucking industry. Our members have operating revenues in excess of \$5 billion and employ approximately 150,000 people.

OTA works with a large number of transportation and other groups. We're a member of the Canadian Trucking Alliance and we're also a founding member of the Better Roads Coalition, a coalition which is dedicated to the maintenance and expansion of the road system in Ontario.

I'd like to talk a little bit about the importance of trucking from an economic perspective. I won't spend too long on this point, but I just want to mention that Ontario's economy is dependent on truck transportation. It's estimated that more than 95% of the goods moved into, out of and within Ontario rely on truck transportation. As we all know, trade is the engine of growth in Ontario and 85%, by value, of Ontario's trade with the United States is shipped by truck.

Why is that the case? The reliance on truck transportation is expected to continue in the future. Transport Canada freight forecasts show that Ontario will lead all other provinces in terms of growth in trucking over the next decade. The reason for that is quite simple: The

trucking industry and the services the trucking industry provides are really the only mode of transportation that can meet the demands of a modern economy, and the fact that we're now serving an economy that's based on value-added manufactured goods.

We talk a little bit in our presentation about trade and traffic and congestion in the GTA. I won't go through everything we've provided. We just ask you to have a look at it, but we do make a few points about congestion and the costs of that congestion on the economy as a whole. We do refer to a recent study by the Ministry of Transportation, referred to as the 1997 Strategic Goods Movement Corridor Analysis. This study basically tells us that the daily commercial volumes on the 400 series highways are both substantial and increasing.

1410

We talk a little bit about the cost of congestion, which in the GTA area alone is close to \$2 billion, or 30% of the cost of moving goods. How do we resolve that? Obviously, we're of the view that the road system has to be enhanced. That has been our position for a number of years, and that certainly was our position during the planning stages of Highway 407.

With respect to the 407, our view was that, faced with the possibility of not seeing Highway 407 completed for another 25 years without the introduction of tolls, the trucking industry saw no alternative other than to propose the imposition of toll roads as a means of completing the project within a reasonable time frame. However, we certainly did not accept tolls lightly and based our support on a number of conditions. For the most part those conditions were reflected in Bill 17, the original legislation introducing the 407.

What we were looking for at the time was the assurance that tolls must only be imposed on significant new highway construction — at the time we certainly did not, and would not now, accept tolls on existing highways; an alternate route must exist so that road users would have the option of using the toll highway or not; tolls would cover the cost of construction only; maintenance of such roads would be paid from existing revenues; the tolls would come off the highway once the debt was retired; tolls must be collected using the most advanced technology possible; and tolls should be set at different rates reflecting peak times.

All financial data relating to the toll highway should be open to the public. We also feel that trucks should be assessed at what we consider to be a fair rate.

We mention the issue of fuel taxes only because these taxes are paid whether or not you use the toll road. Obviously, we have concerns with respect to the amount of money that's collected versus the amount of money that's reinvested back into the road system. For us, this is a competitive issue. We're looking at the commercial diesel fuel tax rate in Ontario. It's roughly 44% higher now than it was a decade ago.

With respect to the highway itself, we very much want to see the 407 completed. We feel that until it's completed

it will never truly be a Toronto bypass, and its effectiveness then would not be measured.

We feel that the importance of extending the highway westward would have a number of positive developments, such as offloading the chronically congested sections of the QE through Oakville and Burlington, as the last presenters mentioned. It would serve the expanding population of Halton region, offer a direct connection between the northern GTA, Hamilton, Wentworth and Niagara Peninsula, and provide connections with the Niagara frontier border crossings, which are of particular concern to us considering that we do a lot of trade with the United States.

There are certainly advantages to extending the highway eastward as well, for similar reasons and for similar benefits in that particular area. We've maintained that, with respect to the toll rates currently, we feel they're excessive for commercial traffic. To give you an example, a tractor-trailer using the 407 during peak periods would pay approximately 30 cents a kilometre. That means the annual cost of a round trip on a fully completed Highway 407 would exceed \$20,000 per year. It is cost-prohibitive for the commercial industry to use that highway. So we would certainly like to see an environment or a situation where there were incentives to reduce the cost of the tolls, making it much more viable for the commercial industry to use.

Another big bone of contention that we have with the existing situation, and we hope this could be addressed, is the whole issue of out-of-province carriers. Right now we have a situation whereby if a commercial vehicle uses the 407 and doesn't pay to do so, he or she, the owner, faces penalties. The Ontario Transportation Capital Corp has acknowledged that they really have no way of enforcing the collection of tolls on out-of-province vehicles. From a commercial perspective, this becomes a competitiveness issue. The same thing with respect to transponders: Commercial vehicles are required to have transponders with them. If a commercial vehicle from out of province or the United States uses the highway, there is no enforcement mechanism to ensure that they use a transponder. These are some of the things that we would hope the new owners of the 407 would be able to remedy or provide us with some assurances that these inconsistencies could be remedied.

With respect to the bill itself, OTA supports the sale of the highway. We are anxious to see the highway completed. We feel that this may be the most effective way of ensuring that that happens. However, that does not mean that we do not have some concerns. Upon first reading of Bill 70, we did have a number of questions, particularly:

Is Bill 70 establishing a mechanism that would make it easier to impose tolls on any new or existing highway?

Does Bill 70 allow the new owners of the highway to exempt out-of-province carriers from paying tolls or otherwise create a situation where only Ontario vehicles pay the tolls? That's the one I just spoke to.

Does Bill 70 confer special business advantages upon the owners of the highway?

Does Bill 70 allow existing infrastructure links with Highway 407 to be tolled?

Those are things we seek some assurances on.

We talk about the specific sections and we do have some analysis and some understanding as to why the bill was worded in such a way. We'd certainly like to make sure that those assurances make their way into the final bill.

What we would like to see as well is perhaps a system of fuel tax credits. Since Ontario carriers travelling on the 407 are using taxed fuel, will the tax credits be available to carriers using the 407? This is the case in certain US jurisdictions.

Toll rates: The government must assure the trucking industry that reasonable rates will be introduced for commercial vehicles, recognizing their importance to the economy and the financial viability of Highway 407. Owners of Highway 407 should be compelled to consult with OTA regarding issues related to the industry.

Marketing: The government must ensure that the new owners introduce innovative marketing strategies, ie, volume discounts, fleet discounts, free transponders for the trucking industry. We're hopeful that marketing will be such that people are encouraged to use the highway.

Extensions: The government must ensure as a condition of sale that the highway purchaser must, in an expedient manner, build the western and eastern extensions of the highway. I would also like to add that we certainly want to ensure that the current provisions of the Highway Traffic Act are enforced on the highway as well.

That concludes our comments and we'd be happy to attempt to answer any questions anyone may have.

The Chair: We have six minutes, roughly, for questions from each caucus. We'll begin with the Liberal caucus.

Mr Cordiano: Thank you very much for your presentation. There's a lot to think about in this bill and I think you've expressed that in your presentation; a lot of concerns that I've raised and I'd like to explore those with you further.

Let's start with marketing. It was interesting, your comments about marketing. What if the new owners of the 407 decided to market the idea that the 407 would be truck-free? How would that grab you?

Mr Burke: When you look at Ontario trucks, it's almost truck-free right now.

Mr Cordiano: But there still are trucks on it.

Mr Burke: We're hopeful that situation would change. No, of course, we don't want to be banned from the 407. Absolutely.

Mr Cordiano: Bill 70 is limitless in what the new owners of this highway can do. There are no restrictions there. They could jack up commercial rates to the point where no trucks will use it. That's a marketing tool.

Mr Burke: That's almost what we're looking at right now. What we're looking for is some motivation to change. We don't think that a new owner would want to

exclude the trucking industry, simply because of revenue. I think if they were to do that they'd get flak from surrounding communities because those trucks wouldn't be able to serve those communities. Certainly if that were the case, that would meet with opposition from OTA. I'm not convinced, however, that that would be the case as the bill is currently written. I suspect you feel differently.

1420

Mr Cordiano: I'm pointing out the extreme case that could arise. It's my job to point out what could happen.

Mr Stephen Laskowski: This has happened in states in the US. New Jersey went through an experience like that. Whether they deliberately attempted to shift truck traffic off the turnpike, they raised the rates by 100%. The trucking community did not go on to the turnpike. Financial chaos set in on the turnpike, and they have, since that point, in a four-year period, revisited, re-marketed to the trucking industry, reduced the rates and brought in volume discounts. Any private highway must, in turn, look at the trucking community as a financial variable. Without the trucking industry, the road most likely will not work.

Mr Burke: The people in New Jersey recognized that it wasn't in their interests to discriminate against me or create a situation whereby commercial traffic was not on the roadway.

Mr Cordiano: I don't want to argue with you. I'm raising the extreme cases, and a case can be made that there is enough traffic on the 407 now that it is viable with very few trucks. Most people will comment that the 407 is not travelled by many trucks, and you've suggested that yourself.

Mr Burke: There are two reasons for that, primarily. One is the rates, and right now, as it is currently available, it is not a Toronto bypass. It's difficult; if someone is going across from Windsor to Montreal, for example, you have to go out of your way to get to it and then get back. Once the eastern and western extensions are built, then we can have a much better analysis as to how effective and useful it is.

Mr Cordiano: But you are concerned about tolls. You're already concerned about tolls. I've spoken to you before about this.

Mr Burke: Yes. We've been concerned about tolls ever since it first opened.

Mr Cordiano: Right. What I'm suggesting to you is that Bill 70 does not contemplate any kind of restrictions on tolls. You're just dependent on the operator doing his part and ensuring that he has a viable business entity. That much I believe in. However, what I'm suggesting to you is that if the usage is increased — the capacity hasn't been met yet, we have quite a way to go, and yet the highway is a phenomenal success, according to what the Minister of Transportation has told us and the previous minister and the one before that, all suggesting that already the numbers are so lucrative you could increase traffic flow on the highway without trucks and still do very well. But anyway, that's another story.

The other thing is with respect to business tax. Bill 70 exempts the new owners from paying any business tax, or property taxes.

Mr Baird: Not business taxes.

Mr Cordiano: Property taxes.

Mr Burke: They'll pay corporate.

Mr Cordiano: Therefore, I wonder if any of your members would like an exemption from paying property taxes. We should all line up and say, "If they're going to receive an exemption" — Ontario Hydro, CN, CP.

Mr Burke: Are property taxes paid on existing highways? I don't think they are. This gets into the whole debate about highway cost allocation, who pays their fair share. I'm quite prepared to sit here and debate that issue, but I don't think everyone wants to stay here all night. Quite often people raise the whole issue of the railways, but it seems every time that is raised as an example, the billions of dollars the railways have received in direct subsidies and recapitalization grants are excluded. That whole issue of rights of way and who pays what is part of a much broader debate with respect to highway cost allocation. That's something we have been debating and arguing for years and years, and we fully expect we will continue to do so.

Mr Cordiano: I can appreciate that but the fact is there is an exemption in this bill for property taxes.

The Chair: I have to interrupt. Mr Pouliot.

Mr Pouliot: Welcome. Always a renewed pleasure. We go back something like 14 years.

Mr Burke: We do.

Mr Pouliot: Say hello to David, Mr Bradley. He's at a convention?

Mr Burke: He is. He's going to be very disappointed.

Mr Pouliot: Good. I remember the debate and the repartee we had on the regulations — shared onus on capacity, axle weight, repartition, slack adjusting, the brakes. The bloody brakes — it's always been a residual problem.

Mr Burke: It just demonstrates how the issues don't change.

Mr Pouliot: That's right; that 34%. In fact, we established with you a blue ribbon committee on safety and it went rather well. It's still going quite well.

Mr Burke: Much of what was in that blue ribbon task force on truck safety was incorporated in the Target '97, truck safety.

Mr Pouliot: There are others, I'm sure, but that's one thing the revolution did not brush aside.

You're right; it's an oversight on collecting the fee, for those who have not participated, who don't pay, for the users who do not. The Ontario Transportation Capital Corp has no jurisdictional capacity. It's not their job. We know what they are. They were instituted by virtue of the partnership between public and private. They went and borrowed the money, if you will. They operate at semi-arm's length. Then they collect the money and they pay the debenture, they pay the bankers back. That's their role. But it's an oversight. It would be the role of MTO.

MTO has all sorts of reciprocal arrangements on a myriad of issues with most of the states, if not all, and certainly with, in most cases, all Canadian provinces. It's their job to be vigilant, because if you go to Nova Scotia

and you don't pay your toll there, it should be reflected on your licence here as well.

Mr Burke: Yes. Can I just interject briefly? I don't dispute what you're saying, but so often in our industry we do have complaints but the whole thing boils down to enforcement. If things aren't enforced, then things aren't going to happen.

Mr Pouliot: The deficit caught me a little by surprise. I need your help. It could be as high as \$20,000 per year. You've mentioned 30 cents a kilometre. Who told you that? Which merchant of fear did you —

Mr Burke: We sat down with a calculator and figured it out. If you're going at peak hours throughout what would be the complete extension, at the current toll rate during rush hour, a round trip, you're looking at in excess of \$20,000.

Mr Pouliot: That's 170 kilometres. That's once a day?

Mr Burke: Twice a day. It's a round trip.

Mr Pouliot: That's 844 multiplied by —

Mr Burke: Two hundred and twenty working days.

Mr Pouliot: Yes, 20,080 hours at your designated workplace will constitute a year's work. I thank you for helping me. That seems to be quite — I know a lot of people who don't drive cars who are worth more than \$20,000. At this rate, if they chase the truckers out, all you will see are some of the others, like the brokers and others who drive exotic cars like BMW, Mercedes-Benz. Highway 407 was built to facilitate — the truck traffic has, what, doubled in the last seven years?

Mr Burke: At least.

Mr Pouliot: And it may double again in the next 10 years. It's the way of doing business. Yet you support it. In fact, if I was to take my shirt off, I'm still all black and blue from my relationship with you when I was minister. Now you see, my friend, I'm sitting here as a member of the third party. This is my last turn. I have immunity.

Mr Burke: If memory serves me right, I was with you the day you announced the 407 and I spoke quite favourably about the prospect —

Interjections.

Mr Pouliot: We're very supportive. There's no doubt that the difference between the present administration and the third party is not on 407. If they can build it as safe and as fast as possible, so be it. We have some difficulties with the financing part of it and we have some difficulties with an open process, that's all. It's no more than that, it's nothing that cannot be reconciled, but it's certainly no less than that. I welcome your presentation.

Mr Burke: Thank you very much. We're delighted you were here today.

1430

Mr Spina: As usual, the OTA has come forward with a well-researched document. I want to understand, and I'm going to pick up on something that Mr Pouliot really began. Do you have some idea of the annual operating cost of a rig? I'm talking about an average annual operating cost of a rig. A private owner, a guy who buys —

Mr Burke: Looking at taxes, for example, if you look at what an average 18-wheel truck pays per year in taxes to the federal, provincial and municipal governments you're looking at about \$40,000 a year. Then you also have to include fuel costs on top of that, labour costs, costs of servicing the vehicle. So it's significant.

Mr Spina: Would it be \$120,000?

Mr Burke: That wouldn't be unreasonable. Again, it varies, depending on the type of the truck.

Mr Spina: I realize that. I'm looking at an average.

Mr Burke: I can't give you a precise figure.

Mr Spina: What I'm trying to put into perspective, Michael, if I may call you that —

Mr Burke: Certainly.

Mr Spina: I'm just trying to put into perspective the general operating cost of the rig versus your guesstimate here of \$20,000 operating toll costs on an annual basis and cross-referencing that to the comment that you made in an earlier section of the report, which is that the cost of congestion, \$1.9 billion, is roughly 30% of the cost of moving goods. Is it fair to say that if the annual operating cost of a rig was \$120,000, the cost of moving goods because of congestion was \$40,000, or 30% of that \$120,000? I want you to correct me if you don't agree with me. I'm saying if the cost of congestion is costing this driver \$40,000 a year and the cost of the tolls is costing \$20,000 — you can juggle the numbers up or down — is there a saving —

Mr Burke: When we're talking about the cost of congestion, we're talking about costs to the economy. We're talking about costs to manufacturers, to shippers, to people who benefit from the services. We're talking about delays. One of the reasons, as this report indicates — a benefit of the trucking industry is that it can respond to just-in-time delivery requirements and quick-response delivery requirements. It's the only mode of freight transportation that is equipped to do so. When you have congestion like we have in the GTA, you have that slowed down, so the manufacturing process suffers. People who benefit from the services of freight transportation suffer. It's a cumulative effect. This is an impact on the economy as a whole.

When you're looking at the trucking industry specifically and the cost of doing business, you're looking at the cost of labour; you're looking at the cost of fuel; you're looking at the cost of taxation; you're looking at the cost of buying the equipment, which alone is in excess of \$100,000 for one rig. You combine that and you're looking at an industry that is still operating on extremely tight profit margins. We haven't had a real significant change since deregulation. It's becoming increasingly difficult to operate. The industry certainly wants to operate safely and make sure that it can continue to make the investment in safety.

We do operate on tight profit margins where volume is increasing and the industry is certainly busy, as a reflection of the expanding economy. But, again, we have to pay close attention to our bottom line. If you're looking at a situation where you could realistically pay an

additional \$20,000 just to use a section of highway on top of what you already pay in road user taxes, that makes it cost-prohibitive, and it does not encourage use of that highway.

Mr Spina: I understand. Thank you for the comments in your report.

The Chair: Mr Hastings, there's time for a brief question.

Mr Hastings: I'd just like to review your basic position and contrast it with the Liberal opposition here, Michael. That is, essentially you guys want this extension, this configuration, this stuff done. The process issues should not in and of themselves create barriers to getting on with the job — not to dismiss in any sense at all the proportion of your concerns.

Mr Burke: We are certainly not opposed to this bill. We would like to see the highway built. We want to see the extensions built. We have concerns, as I indicated, with respect to tolls. We'd like some of the current status quo situation to change. We're hopeful that will change, and that's why we're here today to speak to our concerns. No, we do not oppose the bill, but we certainly don't want to see this bill become an indication of general support or be seen as an indication of general support for toll highways. Our concerns with respect to tolls on existing roads are still very much in effect. Our position really has not changed in that respect.

The Chair: Gentlemen, on behalf of each of the members of the committee, I thank you for taking the time to come before us this afternoon with the views from your association.

Mr Sergio: Madam Chair, before you proceed, I'm looking at the binder which we got today and I'm looking through the bill itself. I can't find sections 13 and 14 and now I realize that page 8 is missing. I wonder if the staff can help me with that.

The Chair: We'll look into that. We'll see what we can do to fix that for you. While we're looking into that, I would like to call upon representatives of the Greater Toronto Home Builders' Association.

GREATER TORONTO HOME BUILDERS' ASSOCIATION

The Chair: Good afternoon, Mr Brescia. Welcome.

Mr Vincent Brescia: Good afternoon, Chair. My name is Vincent Brescia, and I am the director of government relations for the Greater Toronto Home Builders' Association. I would like to thank the committee for the opportunity to present the views of the residential construction industry here today. I've brought a copy of my presentation, so hopefully you have a copy of that in front of you.

Before I discuss the specifics of the bill before us, I would like to take a moment to give you some background on our organization.

The GTHBA is the voice of the residential construction industry in the greater Toronto area, and has been representing the industry since 1921. We represent the

residential home builder, whether they build single detached homes, semis, townhouses, apartments, lofts, conversions, or any other type of residential construction. We also represent the in-fill and custom home builder as well as the professional renovation contractor.

Our membership includes the suppliers to the industry: the brick manufacturers, the window and door manufacturers etc. We also represent the subcontractors, whether it's bricklayers, carpentry, drywall, or trim. As well, we represent many service and professional firms, as well as the financial institutions associated with the industry.

All told — no pun intended — our organization has over 1,000 member companies, maintaining businesses, residences and operations throughout the greater Toronto area.

Last year our members sold close to 27,000 new homes in the greater Toronto area. Each of these homes generates approximately 2.8 person-years of employment, which includes direct employment in our industry, which are things like the framers and the drywallers; it includes indirect employment such as the suppliers, the lawyers, the advertisers etc, and induced employment, which is basically the spinoff in economic activity generated by the direct and indirect employment. Altogether, that means last year's sales of 27,000 translated into more than 75,000 person-years of employment in our industry.

Altogether, the residential construction industry in the greater Toronto area is a \$7-billion a year industry, making it one of the largest industries in Ontario. The health of Ontario's economy and job market are typically a reflection of the health of the residential construction industry. Practically every budget and financial update by every minister of the province looks to the housing starts indicator as a first indicator of economic performance.

If you're wondering why I am telling you all about the economic importance of our industry for Ontario's economy, it's because it is of direct relevance to the bill before us today. The economic benefits and job creation which our industry provides depend on a well-functioning transportation infrastructure. Highway 407 is a critical component of this infrastructure.

1440

I am here today to relay the support of the Greater Toronto Home Builders' Association for the passage of this legislation and to emphasize the need for the full expansion and completion of Highway 407 across the greater Toronto area. We believe that this bill can expedite the much-needed expansion of Highway 407, alleviating growing traffic problems in both Halton region and Durham region.

On the west side, there are a number of important traffic problems developing which could be expedited by the construction of Highway 407 across Halton region. Difficulties are currently being experienced at the west end of Halton region where five lanes of eastbound highway traffic essentially merge with three lanes of eastbound traffic along the QEW.

Similar problems are happening on the eastern side of Halton where five lanes of westbound traffic are merging with only three lanes of westbound traffic, again on the QEW. Anyone who has driven on this stretch of highway knows now to expect the inevitable traffic delays and congestion which occurs in these areas.

The problem has been steadily worsening over the past 20 years. As it gets worse, the problem spills over into the local road network. Regional Road 5, in particular, has seen dramatic increases in traffic levels in recent years. As traffic congestion worsens on the QEW, Highway 5 is increasingly functioning as an alternative for many drivers. This leads to unacceptable traffic levels on the local road network and starts to raise issues surrounding safety and noise levels and things like that.

Why is all of this a concern to home builders? It is a concern because the transportation infrastructure in the region has essentially reached its capacity. Congestion is proving to be a deterrent to new investment, as a dependable highway system is an essential element for many industries. This in turn will have negative consequences for the provincial economy: industrial and commercial investment will get diverted to other jurisdictions; the jobs associated with developing the plants and offices won't materialize; the opportunity for people who would work in these developments will be lost; and the spinoff benefits of these jobs, such as increased consumer purchases, which includes new homes, and tax revenue for the province, will be forgone.

If this problem is left unresolved, it will also lead to pressure within local municipalities to restrict or reduce all types of development, including residential development. I'm sure you can understand why we wouldn't want to see that.

New development in the region is occurring in a northerly direction, as the southern parts of the region have been developed. The Halton urban structure plan will designate land for development between Regional Road 5 and the future Highway 407. These lands have the potential to house over 200,000 people. However, the current congestion levels in the existing infrastructure mean that it will have difficulty absorbing the traffic generated by new development. Any resulting impact on new development would have an impact also on the tens of thousands of people employed directly or indirectly in our industry.

The immediate construction of Highway 407 will increase the road system capacity, providing congestion relief and facilitating the proposed development of the Halton urban structure plan.

A similar problem is developing on the east side in Durham Region as well. Limited road capacity and high congestion levels on the western side of the region are isolating the region from the greater Toronto area and hampering its economic development.

Durham currently only has 24 lanes of road access across the city of Toronto border, and four lanes of road access across the southern York region border. This compares to 190 lanes across the York region/Toronto

border, and 104 lanes across the Peel region/Toronto border.

This has clearly had a negative impact on Durham's development potential. The Greater Toronto Home Builders' Association believes that this in turn has negatively impacted on investment and economic development in the greater Toronto area, with the resulting loss of income generation, tax revenue and jobs.

The GTA is expected now to grow by about 2.5 million people over the next 30 years. Most of this growth will take place in the regions surrounding the city of Toronto. Durham region, for example, is expected to double its population by the year 2021. However, the problem is that these growth forecasts do not take into consideration the limitations on the infrastructure where the growth must take place.

Like Halton, Durham's existing growth has taken place along the southern portion of the municipalities along Lake Ontario, essentially following the Highway 401 corridor. However, much of the future development of the region, as proposed in its official plan, will be in the northern portion of these municipalities. This development, and all its associated economic benefits, will depend on the completion of Highway 407. Highway 407 is essential in ensuring the development of the Seaton lands and a new airport facility in Pickering.

The GTHBA would like to see the extension of Highway 407 to Highway 35, and the connecting links to the 401, as soon as possible. This will prove to be a catalyst for economic development of the region and will enhance the competitiveness of the greater Toronto area vis-à-vis our competing jurisdictions.

Enhancing Durham's ability to attract job-creating industrial and commercial investment will also help promote more balanced development in the region. Many industries and businesses these days have adopted just-in-time delivery inventory management tools. A key component of the locational decision for these industries is whether or not the site will have relatively good access to a major highway network, and one that is not congested. We cannot afford to lose investment in our economy because of a failing highway infrastructure. The GTHBA believes we should be making every effort possible to enhance this infrastructure, which will pay for itself 10 times over with the spinoff benefits to our economy.

The full extension of Highway 407 across Durham region will immediately take pressure off the existing highway infrastructure, further enhancing economic development potential along that corridor as yet another economic spinoff, and enhancing the economic competitiveness of businesses currently located along the corridor.

The completed section of Highway 407 has proven to be a resounding success and has even exceeded expectations. My understanding is that the daily traffic volumes are more than double the level that was expected, a level in itself which was seen as more than adequate to ensure the economic viability of the highway. This on-the-ground example has no doubt significantly enhanced the

perceived investment value of toll highway development by the private sector.

In this regard, the GTHBA commends the government's initiative to explore the private sector's interest in financing, owning and expanding Highway 407. We know that these types of partnerships have been successful in other jurisdictions. If proven successful here, this venture may enhance the volume and speed of investment into the province's highway infrastructure, significantly improving our economic competitiveness.

We are happy to see in subsection 36(1) of the proposed legislation that expansion and extension of the highway is made a requirement in the legislation, based on terms to be negotiated between the potential owner and the minister for privatization. We encourage the minister to make speedy and full completion of the highway across the GTA an important consideration in these discussions.

We also concur with the failure-to-comply provisions in section 36(2), whereby the Minister of Transportation will carry out the expansion or extension work at the owner's expense, should the owner fail to comply with the terms and conditions agreed to with the minister of privatization.

While these provisions will ensure the timely development of Highway 407, there may be a considerable time lag between now and when an agreement is actually reached regarding the purchase of the highway or the construction of the highway extension. These things can often take a long time to develop. In this regard, we would like to encourage the government to begin any planning, approvals or construction work possible to bridge this gap. For example, the required environmental assessment study for the eastern extension of the highway should begin immediately. This would ensure approvals are in place and in fact enhance the value of the asset, which the government is potentially selling.

Regional and local municipalities in the east and west have made substantial investments in infrastructure in planning for new growth in their respective areas. It is important that the development of the highway through these areas is sensitive to local plans for growth. There will be a number of cases where local or regional roads, services, storm water management facilities and easements will cross, link with or be affected by Highway 407.

We suggest that provisions be made to require the private sector partner chosen for this initiative to consult with, and give due consideration to, the municipal concerns and issues in developing the extensions and expansions, including locational decisions surrounding interchanges.

In conclusion, I would like to reiterate the overall importance of Highway 407 to our economy and to our industry in particular. In order for housing to remain affordable in the greater Toronto area, it is imperative that enough residential land be brought on stream to accommodate the large growth expected here over the next 20 years. Without this, land costs will go through the roof, leaving first-time home buyers locked out of the market. Our sales will drop off as an industry, having a major

impact on both the local and the provincial economies. The extension of Highway 407 across the GTA is the linchpin in this equation.

In addition to this, there will also be important benefits in enhancing productivity and quality of life here in the GTA with the full completion of the highway. Congestion ties up people's time. This increases the cost of doing business in our region, and for parents who want to get home in time to see their children or take them to a soccer match or to the park, this is an important quality of life issue. The congestion relief that can be provided by the Highway 407 extension will enhance productivity and the quality of people's lives.

On behalf of the Greater Toronto Home Builders' Association, I would like to thank you again for allowing me to discuss this important piece of legislation, and I would be pleased to answer any questions you may have.

The Chair: We have time for about five minutes for questions from each caucus, and we begin with the NDP caucus.

1450

Mr Pouliot: Thank you for your kindness.

Mr Brescia: Good afternoon.

Mr Pouliot: Good afternoon, indeed. A renewed pleasure; we met under other auspices.

Mr Brescia: Yes.

Mr Pouliot: It's a renewed pleasure, indeed. Business is good with the Ontario Home Builders' Association?

Mr Brescia: It's been a good year, notwithstanding the rather large strike this year, which was pretty tough on our industry.

Mr Pouliot: Yes, that legal work stoppage has certainly been a deterrent to your organization, to the many members you have. You must be a friend of Mr Greenspan. With low interest rates it's a very good environment, is it not?

Mr Brescia: It's a very good environment.

Mr Pouliot: Our party is not only not opposed, but we are proponents of Highway 407 and its extension, there's no question. I'm sure the good people of Peterborough will say we were prodded into it and that we don't do anything on our own. But necessity is the mother of invention, so of course fear was the motivator in this case.

You mentioned in your presentation that you were not opposed to private financing of a highway project for the 407.

Mr Brescia: Yes.

Mr Pouliot: Are you concerned about the ability of the private sector to borrow money at a cost which surpasses that of a public entity, that of government?

Mr Brescia: If the success of the highway is as I understand it, I'm sure their costs will be higher, but it's a business decision on their part. These aren't dumb folks; they know what they're getting into. Yes, their borrowing costs are probably a little higher, but they're going to make the business decisions that are necessary to —

Mr Pouliot: I agree with you that they don't all emanate from hedge funds or from capital. They have the best brains, too. The comparison has no validity. This has

validity; it's today's Globe and Mail. It reflects the market action here: Canada — 9% coupons, June 1, 2025, which is less than 30 years, so it has some relationship — 5.54%; Loblaws, 6.82%; Union Gas, 6.42%. So at present you're looking at anywhere from 75 to 100 basis points on a 25-year issue, which means on a project of \$1.5 billion — the existing 69 kilometres cost \$928 million plus the toll fee, so it costs about \$1.2 billion. So you're looking at at least \$1.5 billion, if not \$2 billion. So you're looking at \$15 million to \$20 million per year more because of their lack of matching capacity to borrow, and they're profit-motivated. The government sell the highway, above all — and I'm imputing motive; that's OK — so it can take \$1 billion, put it against the deficit and say: "Look, we've balanced the books. You got a 30% decrease in your personal taxes and we've balanced the books. We'll have another budget, and then we'll issue the writs and we'll start walking on water." I know. Been there, done it for 14 years. This is the way they will play it, too.

What we're concerned with — and I think the three parties are, if I may. We all want the highway built as quickly and as safely as possible, but the concern is the methodology. How do you arrive at doing this? We're not satisfied that they will have the long-term ability by virtue of being profit-motivated — there's nothing wrong with that — by virtue of their costs being higher. The reality is that we'll pay more tolls, higher tolls and pay them forever. Is that not a concern? It's a departure from the 407 as we know it. We could build the expansion using the present system, as opposed to a completely private system. We're selling one of our flagship assets, nobody knows to whom. Do you have a concern about that?

Mr Brescia: I'd have to say any concern in that vein from our perspective is far outweighed by the speed-of-construction issue. This thing just can't get done fast enough as far as we're concerned.

Mr Pouliot: She's nice, isn't she?

Mr Brescia: Yes, and congratulations. From our perspective, profits aren't necessarily a bad thing. If it attracts investment it's going to make things happen faster, and that's certainly our hope. It's the speed. We're glad the government has taken a shot at this, because if this can make it happen faster, we are absolutely thrilled. In terms of what it does for the tolls, they can't raise them too high because then they'll lose the traffic. This is where the market is going to work on this thing, hopefully. That's what we're certainly hoping.

Mr Pouliot: It's a good point. I thank you.

Mr Baird: I'll go quickly. Thank you for your presentation. I appreciate the time you've put into it.

You said in your presentation — I think it was an off-the-cuff remark — that the provincial Ministry of Finance often looks at the health of your industry in terms of the overall economy. Since it's such an important business community in Ontario, I want ask you a business question. When the government puts a tax on the whole building industry, whether it's a development charge, whether it's retail sales tax, any tax, do the owners of the construction

company pay for that out of their profits, or do they just put it on the price of a home?

Mr Brescia: They all get tacked on to the price of the homes.

Mr Baird: So it's just stacked right on.

Mr Brescia: Yes.

Mr Baird: And that would be the case with just about every kind of tax.

Mr Brescia: Exactly.

Mr Baird: Great. Following from that, we have an extensive highway network in Ontario. On the 416 and the 417 in my area, there's no property tax paid on those highways; on Highway 7 there's no property tax paid; Highway 401, I could take the highway to Guelph, I could take it to Windsor, I could take it to Hamilton, Niagara, Brantford, London — you name it, and there's no property taxes whatsoever on those highways.

Now, Highway 407 is going to be privatized. If we were to single out the taxpayers who drive on that highway and require the owners of that highway to pay property tax, by your admission they would just add it to the tolls. Would that be fair and something that would be supportable? Would the construction industry and home building industry in Toronto feel they should be singled out and be the only one to have to pay property taxes on the road they use?

Mr Brescia: That's a good question. To tell you the truth, I hadn't really thought about it, but given the spinoff benefits a highway has, my gut instinct, and this just an off-the-cuff reaction —

Mr Baird: Because we certainly don't support it.

Mr Brescia: Yes, keep it off. You know, this asset is far too important to the economy. I'm here speaking of our industries, but there are a hundred industries out there that would come and say the same thing I am.

Increasing the cost reduces the economic development potential, the potential for expansion of the highway, because the numbers work less and less as you get farther away from the traffic areas. We'd just like to see the whole highway network expand.

Mr Baird: Because this company would have to pay corporate tax, it'd have to pay employer health tax, CPP payroll taxes, EI payroll taxes, retail sales taxes — the whole nine yards.

Mr Hastings: Mr Brescia, thanks for coming in today and giving general support for this proposed expansion. We've been hearing from the two opposition parties, particularly the Liberals, that they're generally, in principle, in favour of this particular project, but they have several concerns. The NDP were essentially the fathers of it. The gentleman sitting right across there, Mr Pouliot, got this thing going. But they keep talking about these concerns. I'd be interested in your comments in terms of the methodology. Their methodology for getting there would be considerably different from ours. Yet both parties, particularly the Liberals, had the opportunity; as Mr Cordiano mentioned, they allocated the dollars for this about nine years ago to get the thing going, yet nothing happened. Can you tell us what you figure is the

fundamental difference between their methodological approach and this one? They are hung up to a great extent on process, whereas on this side we're more oriented to getting on with the job. Where would your industry fall into those categories?

1500

Mr Brescia: It's pretty clear from our presentation that speed is everything to us, and I'll say it again: It can't happen soon enough. Our intuition on this is that there might be a "get it done" attitude with some of the investors who might take an interest in this now that they've seen the success of the first part. It was a great job and a great idea to make it happen. It's an enormous success. I think they might be driven to make it happen sooner. Once they get involved, time becomes money and they can't get it done soon enough themselves, if they get involved. That's why we're excited about the idea of the attempt at privatization. That's just high level, and that's as much as we delve into it.

Mr Hastings: Do you have a fundamental concern with the exemption of the taxation?

Mr Brescia: Not at all.

Mr Hastings: Would you cite any other instances of structures that have been built in the greater Toronto region where there has been tax exemption, either created by legislation or by regulation? All we have to do is go to the exhibition centre, the national trade centre.

Mr Pouliot: The SkyDome.

Mr Brescia: I'm sure there are many. This is one that's worth it.

The Chair: We'll move to the Liberal caucus.

Mr Cordiano: I was interested in your comments about how the costs are passed on to consumers, any increases. My concern with property tax exemption for the eventual owners of the highway is that if you do it for them, why aren't you going to do it for Ontario Hydro, then, or the railway? They're paying property taxes.

More to the point, if we have any further privatizations, does that mean those will follow this precedent and be exempt from paying property taxes? Here we get into this difficult predicament. We're creating a precedent here, as far as I can see. The minister failed to indicate why he was doing that, other than the fact that private operators shouldn't have to compete with the public highway. To my thinking, it's certainly unfair. You have one taxpayer. They're paying Ontario Hydro rates; they're consumers of hydro, and they pay for that. They're going to be the same taxpayers that use the 407. There's something not right there.

I understand your urgency to build the highway. I would ask the government why they didn't commence this process three years ago. Why wait till the end of their mandate to start this? We allocated funds in 1989. That's ancient history now, but I'll point out that we allocated the funds, and of course we lost the election in 1990. The previous government had every intention to move ahead with the expansions at both the western and the eastern end, yet they got interrupted as well. So no one is against the expansion of the 407 here. That's not what we're

discussing today. What we're here to discuss and what we're here to ensure is that the taxpayers get a good deal for any sale. That's why I'm proposing that the auditor of Ontario examine this deal, to ensure that we get a good deal, that it's fair. I think everyone concerned would want that to happen.

Mr Brescia: You raise some interesting issues. I'd have to say honestly, from our perspective, I haven't given enough thought to some of those issues. But my reaction to your last point is that property taxation itself, whether you decide to apply it or not, is going to affect the ultimate value, assuming — and let's hope — we have some good negotiations and we have good negotiators on our side. It's simply going to affect the value the taxpayers get out of it. In terms of the return to the taxpayers, from that particular angle, I don't see it as being an issue.

Mr Cordiano: We should scrutinize it, though.

Mr Brescia: Absolutely. I don't have a problem with scrutinizing it. You raised some important issues about equity.

The issue I have with highways is that we don't seem to have trouble getting the electrical infrastructure done and getting the gas infrastructure done and all the other utilities, and this is a utility, really. We need this to happen. If keeping the taxes off helps to speed it, then it's an investment well worth making for all taxpayers.

Mr Cordiano: We've got problems with Ontario Hydro now, so if we eliminated the taxes they pay, presumably they would be more efficient and less cost to the users. I'd throw that out for discussion. That's what the government is proposing.

Mr Sergio: Mr Brescia, we all agree on the completion of the highway, both east and west, all the way to the Niagara region and past Highway 35 and so forth. We need it for a number of reasons.

In your position, you're speaking on behalf of the builders and developers and so forth. They come in, they build houses, they make their money and go away. But in answer to one of the first questions, this is going to be a private highway. We won't have any control. There is no control whatsoever here.

Mr Baird: Total control.

Mr Sergio: Read the legislation. Read your own legislation. This is going to be a private highway. They can do whatever they want. Our concern, Mr Brescia, is not only with respect to getting the goods delivered on a timely basis, in an efficient way, but also to look after those taxpayers out there. I'm concerned that those taxpayers, the ones in the new subdivision up in Peterborough or Niagara-on-the-Lake, let's say — they will have to go back and forth, and we heard \$20,000 a year for two trips a day for one deliverer. Can you imagine, \$20,000 a year?

If we are saying, "Look, they don't have to pay taxes," well, hold on a second. All the highways now are under the control of the corporation, the province of Ontario. Once it's sold, we lose that. Once you become a lessor, you've got to pay businesses taxes.

Now you're saying, according to the government member's view: "Jack up the price. They don't pay taxes, so let the user pay." It's not only going to be the user, but this is going to be all the taxpayers of Ontario, regardless of whether they use it or not, because now it's a private highway. The toll is going to be established not by you, by me or by the Premier, whoever he or she may be, but by those people who have gotten sole control, sole authority, to decide how much they're going to charge for those tolls. Those people who move to a subdivision in Peterborough may not be able to afford those tolls to use Highway 407.

Those are our concerns, but we all agree that the highway should be built very expeditiously. Instead of giving a 30% tax cut, as my colleague said, they could have done that three years ago. You and I and the people below us, let's say, haven't seen anything from the 30%. If they really wanted to create jobs and hold this within the government's control, they should have said, "To heck with the 30% tax cut, and let's build the highway and still be the owners." Thanks for coming.

The Chair: On that note, thank you very much for coming. On behalf of all the members of the committee, we appreciate your perspective from this important organization.

GREATER PETERBOROUGH CHAMBER OF COMMERCE

The Chair: Now I'd like to call representatives from the Greater Peterborough Chamber of Commerce. Good afternoon, everyone. Welcome to the committee. As I'm sure you know, you have 30 minutes for presentation time and, hopefully, time for questions. Before you begin, please introduce yourselves for the Hansard record and for the committee members.

Mr Don Frise: Actually, I was going to introduce the people who are with me through the text. Is that OK?

The Chair: That's perfect.

Mr Frise: My name is Don Frise. I'm the general manager of the Greater Peterborough Chamber of Commerce. I was asked to provide the written presentation, and then all our panellists will be available for questions afterwards.

It gives us great pleasure to appear before you today representing the Greater Peterborough Chamber of Commerce. Our chamber is now in its 109th year of operation, with over 1,000 voting members, who employ almost 20,000 people in our area. The chamber is dedicated to creating a prosperous community by promoting the free enterprise system, a healthy business environment and acting as the voice of business.

In addition, we are also pleased to represent, at their request, New Corp, a new community organization responsible for coordinating economic development in the city of Peterborough and the county of Peterborough.

Our chamber has a history of working closely with the city and the county on economic issues. As an illustration of this fact, Alderman Mike McIntyre, representing the city of Peterborough, and Dave Brady, who is the 1998

president of the Greater Peterborough Chamber of Commerce, are with me today. Unfortunately, Joe Tiernay, representing the county of Peterborough, was going to be with us but was not able to attend.

We are here to support the government's initiative to sell Highway 407 to the private sector. However, we also want to share our vision of provincial highway infrastructure that we feel is necessary to allow continued growth into the new millennium. We challenge the committee to make its decisions based on long-term solutions rather than short-term fixes.

1510

To illustrate what we mean by long-term vision, we would remind you of the Prince Edward viaduct, the bridge that connects Bloor Street with Danforth Avenue over the Don Valley. In 1910, an engineering firm from New York, Jacobs and Davies Inc, made a survey of Toronto's transportation problems and recommended that the city begin constructing a subway and also a viaduct across the Don Valley. Torontonians voted on these issues in 1912; they turned down the vision to do the subway but voted for the construction of the viaduct. Those responsible for the construction had the vision to ensure that a lower deck was built under the viaduct for later use as a public transportation line. When the Bloor Street subway was built almost 50 years later, this vision saved the city of Toronto millions of dollars. Actually, if they had built the subway back when it was originally proposed, it would have saved something like \$500 million.

In addition to my colleagues from the city and the chamber who have joined me today is John Bowes, a local realtor, community leader and a past president of the Greater Peterborough Chamber of Commerce. In 1990, John headed a committee which researched the highway system of Ontario, with particular emphasis on the completion of Highway 407. When it was learned that there would be an indefinite delay in completing the eastern section of Highway 407 due to lack of funding, their research turned to innovative methods of financing infrastructure including toll roads. The outcome of this research was a report titled The Ontario Motorway Network. Copies of an abbreviated version of that original report have been provided today for the committee's information.

Some of the key elements of the report included — and these are my thoughts, not John's; John might have some others, if you're interested, later on — a system of controlled-access highways which would run parallel to existing routes to form a new network linking all parts of the province, construction to be completed within a 10-year time frame — ie, it would have been completed by the year 2000, if that had gone ahead. The purpose of the network was to facilitate and stimulate international and interprovincial trade. Financing was to come from a combination of private and public funds, with the costs to be recovered over a period of years from toll roads and other fees and concessions. The proposed roads would be

designed, built, financed and operated by a new crown corporation to be called the Ontario Motorway Corp.

The plan called for construction of the M1 route, which is virtually identical to Highway 407, first. Revenue projections done by the committee suggested that the cash flow from this first highway would be strong enough to help finance and in fact maybe totally finance some additional roads to be built, but not all the roads to be built, that it would be strong enough to at least get them going. The roads would then be built in sequence. The plan called for the extension of Highway 407 through the Niagara region to a new border crossing to the United States, with its network of interstate highways.

The second route was to cross the province from Windsor to Ottawa, parallel in many areas to the existing Highways 407 and 401. This was a new centralized Ontario highway intended to facilitate international trade and tourist travel as well as to stimulate regional economic development beyond the greater Toronto area.

The third route in the transportation plan was a northern Ontario corridor to the Manitoba border.

When the minister introduced the current legislation last month, he gave credit to the former NDP government for starting construction of the Toronto segment of Highway 407 as the first provincial highway to be financed, at least in part, by user fees. This may be true, but we do point out, with all due modesty, that the government of the day acted only after persistent prodding from organizations like those represented here today, which provided their visionary report not only to successive ministers and members of provincial Parliament, but also, in May 1990, to the Royal Commission on National Transportation.

Hansard reports it was stated in the House that 407 was "a highway with no beginning and no end." Those of us who are familiar with Toronto don't have to look too far to find examples of similar situations from the past. The ski jump at the east end of the Gardiner Expressway and the Allen Expressway are just two examples of broken visions and incomplete dreams.

Our community realized over 10 years ago that unless the province greatly accelerated its rate of spending on highway infrastructure, we would quickly choke off growth across the province. Although the chamber has never been a strong supporter of increased user fees, licences or taxes, our organization came to the conclusion that a plan using tolls and the private sector was probably the only reasonable way to add the infrastructure that was required in a reasonable time frame. For these reasons, we support the government's initiative to sell 407, but we are greatly concerned when we read news releases that state that the highway will be extended to Highway 403/QEW in the west and ultimately to Highway 35/115 in the east.

We urge the committee and the government of Ontario to ensure that a definite commitment to complete the road to 115 and 35 be included in any agreement for privatization, accompanied by a specific time frame for completion. If the highway were left in the hands of government, we have a very clear process for communicating our

concerns if completion of the highway is not reached quickly. If the system is privatized, who do we complain to if no formal agreement has been made and/or the work has not been completed in a reasonable time frame?

Our second concern revolves around the continuation of the vision outlined in the Ontario Motorways Network. We believe that the agreement struck by the government should ensure that if the 407 is as profitable as some have projected, the people of Ontario should share in these revenues and they should be used to reinvest in continued expansion of highway infrastructure that will link the entire province and help to stimulate economic development.

In a brief written in 1990, our chamber suggested that construction of the 407 would help to alleviate congestion on Highway 401; help to reduce the serious problem of worsening response times for emergency vehicles; act as a major stimulus to economic development north of the overcrowded Lakeshore area; prove to be a cheaper alternative to adding new traffic lanes on Highway 401; serve as an alternative transportation route in case of some catastrophe on Highway 401; and help to reinforce east-west communications in Ontario.

In short, we were sold on the construction of 407 some 10 years ago and we are still sold on its need in 1998. We believe that privatization is a reasonable route for the province to take to accelerate the process of extending and completing this valuable and necessary link in our province. At the same time, we believe it is imperative that the government of Ontario ensure that any agreement made to sell the highway include a definite commitment and time frame for the completion for not only the west but the easterly portion of the highway in order to ensure that it doesn't become a road without a beginning or without an end.

We challenge the committee to make its decisions based on a vision of the future. We believe that the revenues generated from Highway 407 will be substantial and that steps should be taken to ensure that we do not short-change ourselves in sharing these revenues and ensuring that they are reinvested in a continuing expansion of transportation infrastructure in the province.

On behalf of my colleagues, once again thank you for this opportunity to share our vision and concerns regarding the construction and privatization of Highway 407.

The Chair: We have six minutes for questions from each caucus. We begin with the government.

Mr Galt: Thank you for the presentation, and for coming in and supporting the eastern part of the province. It's certainly encouraging from the Northumberland point of view to hear you pushing for the eastern extension.

We heard a presentation from Durham this morning, and they were doing an interesting comparison. The number of lanes coming into Toronto, as I remember, is something like 24, versus 100 and some from the north and well over 100 from the west. So we're a kind of a poor cousin in the number of lanes coming into the GTA from the east.

I go back to the early 1960s when we read in the papers that we were going from the four-lane 401 across Toronto to 12, and in some areas 16 lanes now in place. It's taken 35 years to get them in place. When that was in the news, we thought we'd never have a problem again. But here we are looking at another bypass.

You talked a lot about your vision into the future, and there's a neat one that you made reference to, the viaduct. We're not selling the land in this case, we're only selling the value-added, so to speak. The bill does not state the length of time but that will be in the request for proposal. What would you think in terms of length of time? You look down the road 15, 20, 30 years, and probably that's about the time when it's going to be worn out. Does Ontario really want a worn-out road? I don't mean to tell you the answer, but there are some concerns about, how long should this time frame be, 99 years, 10 years? Do you have any gut feeling about how long we should be looking at this sale to take place? If they're going to build this eastern extension and the western extension, it's going to take a few years to get them in place. They also have to get their revenues back. Do you have any feeling in the vision? Because you were talking a lot about a vision.

1520

Mr Frise: I don't know whether I have any particular time frame in mind. The report of John Bowes and his committee did said it needed to be built within 10 years. The whole idea was you were going to generate revenues on the first stretch and then you were going to use that to finance the additional infrastructure. So it was going to be an infinite time frame you were looking at under those circumstances, because it would have taken some time.

On the other hand, I remember when Ed Philip was the Minister of Transportation, and it wasn't that many years ago that he said it wasn't going to be built in our lifetime. We have part of it built now and hopefully we're going to get the rest of it built in a big hurry. But in terms of how long the agreement should be made for, I don't know that I have an answer. John, would you have any suggestions on that?

Mr John Bowes: No, I didn't know there was going to be a time limit on it under the present proposal. In our research of toll highways in Europe and other parts of the world, it usually appeared to be a 30- to 40-year agreement. I'm a little surprised to be hearing the present proposal to effectively turn it over to the private sector indefinitely. But as long as the province is keeping control of the land and there's some basis for sharing the revenue through the leasing of the land, a longer-term agreement might not be such a bad thing.

Mr Galt: I know it was maybe not exactly a fair question, but it's something we're struggling with, and you did mention the vision. We don't intend to be indefinite. Although it's not specified in the bill, certainly it will be specified in the agreement. It's not to be for ever and ever; there will be a time frame there.

Mr Frise: Maybe I could just suggest, though, that if the proper agreement is reached and if the private organization that takes it over is successful in running it in

an entrepreneurial way, and if the government strikes a deal where it's going to be sharing in the profits, you may not really care exactly how long it goes, as long as it's being run in an effective way, it gets built in a very short period of time and it's generating revenues back to the province that we would suggest need to be isolated and put back into additional infrastructure. That being the case, the time frame probably doesn't matter.

Mr Galt: I think that has been very well said, particularly that we get that link hooking into 115, right?

Mr Frise: Yes.

The Chair: Further questions? The Liberal caucus.

Mr Cordiano: I suppose, then, just to pick up on the point that was made earlier, the idea that you're advocating is you have a road that's generating revenues that could finance the construction of other roads. If I could believe that, it might not be such a terrible idea. But imagine what governments do with revenues no matter what they derive them from. They go to all sorts of uses which the government of the day deems to be appropriate, some of which are terribly stupid and some of which are in the public interest. Do you have that much confidence in government?

Mr Chudleigh: Perhaps you should ask which government.

Mr Cordiano: I was going to say "this government," but I was being charitable.

Mr Bowes: If I could comment on that, the vision we are bringing here today isn't just for the competition of the 407, but for the extension of the 407 to Ottawa, to the Niagara-Buffalo crossing and so forth, eventually to northern Ontario, to the Manitoba border.

We are just suggesting that before you go out and make a deal to sell the 407, which is going to be a very busy and profitable route, you think about these future extensions and have some mechanism to take a portion of the revenue. Say you have a percentage lease where 10% of the revenue comes to the province for the land. In France they sold concessions to private toll road corporations and they found that some were much more profitable than others. Some traffic didn't come up to their expectations, so they created an equalizing body of, I think it's called Autoroutes de France, for the purpose of taking surplus funds from the busy sections, say around Paris, and helping to subsidize the operation of the less busy sections. That's what we'd like to bring to your attention.

Mr Cordiano: Pretty interesting plan. Thank you.

Mr Sergio: Thank you for coming. Just to follow up on that, we have a double responsibility. One is to build highways throughout, not only for the benefit of the individual residential driver, if you will, but also for the delivery of goods and services in a very efficient manner. But ultimately, the other responsibility of ours — whether that particular highway is in private hands as we are directed here or in government hands — is to provide a very affordable system of transportation. Otherwise, what is the purpose? If we're going to build something with taxpayers' dollars, then we're going to sell it, and they're going to be making all the profits, and they're going to

make it so unaffordable that our people will say, "Hey, what have you done here?" Do you believe, speaking of that particular mechanism in there, that we should have some little power left so that we can come down and say "Hey, look, our people are getting gouged here both ways."

Mr Frise: I'll try to respond to some of that. Obviously the government is going to retain ownership of the land and obviously it's going to have some leverage there. What gets built into the final agreement, I don't know, but there are a couple of things that I think are important. The first is that the plan that was proposed by John Bowes's committee in the past — and to some extent 407 has gone this route — is a parallel system of roadway which follows another road already in use. So you have parallel routes, one of which you have to pay to go on and the other one of which you don't. That means that both parties benefit, that if we divert some of the traffic, people who are willing to pay, on to the toll road, the people who go on the non-toll road benefit as well. There's a benefit to both. I think that's an important concept, and it was built into that original mechanism that these roads which were about to be built across the province were all paralleling another route.

Up through to the Manitoba border, our friends from northern Ontario have been concerned for years that if they get one truck accident on the road up there, they're basically out of commission. They can't do anything. Some of this infrastructure is really required.

The second part of it is, keep in mind that if it's not built, it's of no value to anybody. So the critical thing is, as the gentleman who went before us said, "How quickly can we get it built, and how quickly can we start building a new development within our area?"

One of the interesting things that came out of a report back in about 1990 from the Ontario Ministry of Transportation was that they discovered that economic development tends to follow the development of transportation infrastructure. I shook my head at that one because I thought that Van Horne and others had figured that out about 100 years ago when they built the railroads.

But basically, if we look at 401 as an example — a very short story: I talked to some kids about 10 years ago about 401 and why we need to have 407, and they said, "The problem with 401 is that they built it right through the middle of Toronto." I said, "Exactly." That just proves the point that development tends to follow the development of infrastructure. They didn't realize that that had been the north Toronto bypass when it was built.

Mr Sergio: The question still remains, if I have the time, will we have a mechanism where we have some control so that if you, the new owner-operator, go out of line, we have some mechanism in place? Would you like to see a mechanism in place?

1530

Mr Frise: I think, as the previous gentleman said, that the market will help to dictate what the tolls are going to be, because if the tolls are too high, people won't use the road. But time is money, and interest costs money. So

those are the choices that I think people are going to be making. To some extent that will be a control that's in place. On the other hand, I certainly wouldn't suggest, and I don't think the members of this group would suggest, that the government abdicate all of its authority to act.

Mr Sergio: Yes, we appreciate that, but two trips a day, \$20,000 dollars a year — I think Mr Pouliot had the figures — for a delivery person to use 407 now? That's a lot of money. Thanks for coming.

Mr Pouliot: Thank you, and welcome.

Mr Frise: By the way, it's amazing what you can do if you don't care who takes credit for it. So congratulations on the 407.

Mr Pouliot: It's qualified. This may be true, but we do point out, with all due modesty — I like that — that the government of the day acted only after persistent prodding from organizations.

Gentlemen, I know the dilemma that you face. I take it that as a chamber of commerce you don't get many compliments. It's quite difficult to convey one. And you're right, it's hard to help people.

On your page 3, you quote Hansard, that it was stated in the House that 407 was "a highway with no beginning and no end," and then you go on to illustrate, I think rightly so, two examples. Sometimes it ends that way. Highway 407 was built from the premise of expediency and economy of scale. If you give the engineering, design and building authority to one consortium, you will achieve better value for money and it will be done quicker. We felt comfortable because we said that the province reserves the right, as always, to set the standards: You build in accordance with the specs and we will monitor compliance.

At the beginning we too thought that in the best of worlds, they could come up with the financing themselves. Candidly, I don't think we gave too much thought — we make the point today, maybe because we're sitting here — we didn't spend too much time thinking about the cost of borrowing and the impact that it would have on the consumers. But since they came back and they said, "Look we'll build it, of course, but we don't have the capacity to borrow. Will you do the borrowing?" — hence the capital corporation.

In this case, unless it's revenues that are indirect, oblique, revenues that are controlled by the province — it would be land rental, if you wish — and we're asking that the money be dedicated to the construction of other highways. I'm so often wrong, but my experience of politics is that the Premier and the Minister of Finance, often the Deputy Premier at the same time, have a very close relationship, and all the other ministers pull on the blanket. It's hard to have a dedicated fund. It's very difficult, because all premiers and finance ministers love to have the money and then they dole it out to different ministries. They'll tell you: "Health never gives us any money. Who's going to pay for health?" So they'll use every scheme, and it's not that wrong.

But in terms of Highway 407, it's going to lead — they'll tell you this more eloquently than I can. We're great believers, the three parties, but we have some

scepticism as to the method to arrive there. But if you fear expediency, have no fear. If there's one thing this government can do, it is to make things happen. I only hope that since it's a highway, the pillars have a good quality of foundation. The good engineers at MTO will be supervising it.

I welcome your presentation. I think you're right on, but you too wish to be served first. Everybody's in favour of the project, but they all say "Start at my place." "No, no, no, why don't you start at my place, more importantly?" That's the engineering and that's the engineers, but it's going from 69 to 164 kilometres. Give the contractor three years, four years.

Mr Frise: I don't think we're actually advocating that the construction start at 115 and 35, but rather that there be a concrete time frame put in place at the time that privatization comes about. Otherwise the problem you have as you go east — and I'm sure you've heard from others who have talked about the eastern extension and the need for development and how we have really skewed development within the GTA. It has happened much more in the west than in the east. We need to have the transportation put in there. If you just drop it out in the middle of some field or in some community that's not prepared to take it, then what have you really accomplished? That's why it's important that it goes right through to 115 and 35.

Mr Pouliot: We should be so lucky. You mentioned people in northwestern Ontario. The riding that I'm honoured to represent is 1,000 miles long; 400 of those miles — we go all the way, not to James Bay, but farther north to Hudson Bay — have no road system. Joseph knows that. The road system in this province ends in Pickle Lake. You'll never have four-laning. We don't think there's a need, but there certainly is a need for an appropriate passing lane.

The Chair: Gentlemen, on behalf of all the members of the committee, I thank you for taking the time to come before us this afternoon with your advice. It's greatly appreciated.

DURHAM REGION REAL ESTATE BOARD

The Chair: I'm now calling representatives from the Durham Region Real Estate Board, please.

Mr Ted McCracken: Madam Chair, I'd like to thank you for the opportunity to address this committee. My name is Ted McCracken. I'm the president of the Durham Region Real Estate Board. I am a broker with the firm of Colliers Macaulay Nicolls and I specialize in commercial and industrial properties.

The Durham Region Real Estate Board represents approximately 600 realtor members and has a jurisdictional area which extends from Brock Road in Pickering as our western boundary to the Newcastle-Hope town line, just this side of Port Hope. To the north, we extend as far as Lake Simcoe and Lake Scugog. It's a

large geographic territory and we have basically five roads that traverse it from east to west.

The largest and only controlled-access highway is the 401. Two secondary highways, number 7 and number 2, are in many cases simply extensions of residential streets as they pass through our communities. Last, we have Concession Road 4, Taunton Road, which hooks up with Steeles Avenue in Toronto, and we have what we sometimes refer to as the south service road, which parallels the 401 and goes through name changes — Bayley Avenue, Victoria Street, Bloor Street — as it passes through the various communities. These are the routes that our people use to transport themselves between Toronto and our communities.

The Durham Region Real Estate Board cannot endorse Bill 70 in its present form. We suspect it will continue the ongoing discrimination imposed upon the people and businesses of Durham region by the Ministry of Transportation and successive provincial governments. These may sound like harsh words, but we believe they are justifiable.

The south service road, south of the 401, does not extend across the Rouge Valley, where it would connect with Lawrence Avenue. Therefore, all of the traffic on that road has to divert on to the 401 at White's Road. According to traffic counts, that's 20,000 vehicles per day. Highway 2 handles approximately 30,000 vehicles per day. That volume is consistent from the Toronto boundary all the way out through Oshawa. It doesn't rise and fall, there are no peaks and valleys; it's steady traffic.

1540

The 401 itself has 170,000 vehicles moving between Durham and Toronto at the boundary line. Taunton Road and Highway 7 are in most cases only four lanes and, as I previously said, they connect to Toronto at Steeles Avenue. We're considerably north of that. If you live in Durham and work in the GTA, if you have a business in Durham and need to ship into the GTA, there are no other options than these roads.

Compare this to our friends in Mississauga. If we use Highway 10 as a north-south reference point, you have 120,000 vehicles using the 401. You have another 98,000 vehicles on the 403, 130,000 vehicles on the QEW, and the major east-west streets of Steeles, Britannia, Eglinton, Dundas and the Lakeshore each average about 20,000 vehicles. Far more vehicles move from Peel into Toronto than from Durham, but they have considerably more options. A single fender-bender doesn't spell disaster at a morning rush hour. A rolled-over truck doesn't add a couple of hours to everyone's drive time. We have no alternative routes that we can use to avoid an accident location.

Compounding the problem is the comparison of our roads to theirs; specifically the number of lanes. The 401 between Highway 48, Markham Road, and the 427 averages about 300,000 vehicles per day. This equates to about 18,000 to 25,000 vehicles per lane of traffic. From the airport out to Erin Mills Parkway, the traffic counts decline from 16,700 vehicles per lane to 10,000 vehicles.

In Durham, we decline from 13,000 vehicles per lane down to 10,000 vehicles at Pickering and then we balloon back up to 17,000 vehicles per lane at Whitby. This escalation is caused by a reduction from 12 lanes to six at Brock Road and results in major traffic jams each and every rush hour; no exceptions.

A further factor that must be taken into account when looking at traffic flow counts is the 24-hour day. Although it cannot be substantiated from the source data we used, it is logical to assume that suburban traffic would tend to be more concentrated during rush hour time periods, while traffic in off-peak times would be proportionately higher within Toronto. To put this into a comparative example, let's examine one of Toronto's favourite phrases: the Don Valley parking lot. The Don is always busy. The traffic never stops except in rush hour. But the Don only averages about 80,000 vehicles per day. The 401 through Whitby averages almost 100,000 vehicles per day. We have a problem and nobody seems to care.

Congested roads are unattractive to industry. Business will locate where it is the most cost-effective for them to do so. Industry has been telling us for years that Durham doesn't work if you want to do business in the GTA. They have told us that by locating in Mississauga, Vaughan and Markham. Those communities have exploded while our growth has been marginal by comparison. The jobs that should belong in our community, to our neighbours and to our children, are not there. They're elsewhere. In Durham we have become the economic backwater of the GTA; a strong statement, but we believe it.

Based upon the preceding, one should expect that we would embrace Bill 70. Unfortunately, we recall too many previous plans and promises made but not delivered. Oshawa still sits with two vacant fields waiting for GO Train stations promised by the last Liberal government. Municipal, regional and provincial politicians all basked in the publicity of announcements on the 401 widening as far out as Highways 35 and 115. We were told that there would be express and collector lanes as far as Whitby and five lanes each way through Oshawa and Bowmanville. Unfortunately, it was the NDP government that told us that. The reality, we're now told, is that there are no provincial funds allocated to complete the 401 beyond Brock Road — none. Although Durham residents have paid their fair share of provincial tax dollars, the proposed solution is for us to pay again to a private corporation which will correct the government's shortcomings. Even that we would probably accept if we thought it would happen, but it won't.

The press reports that revenue from the existing 407, while covering capital costs, is not adequate to build the necessary reserves to support ongoing maintenance. Whether this is accurate or not, it casts serious doubts that a private toll road through Durham region would be viable unless toll rates were significantly increased or subsidized. Our MPPs have assured us that we need not be concerned because the sale of the 407 to the private sector will be conditional upon its extension through Durham. Our question is, when? We need roads now.

The fourth paragraph of the government's press release of October 19 states, "The highway will be extended to Highway 403/QEW in the west, and ultimately to Highway 35/115 in the east." What does "ultimately" mean? It certainly does not mean soon. To the Durham Region Real Estate Board it means another empty pre-election promise. If the government wants our support on Bill 70, if our MPPs want our support in the pursuit of their next mandate, we want to see a timetable clearly stated in Bill 70 for the start and completion dates of the proposed extensions. It's either that, or please honour the previous commitments made to Durham region and finish the 401.

The Chair: Thank you very much. We have six minutes for questions from each caucus. We begin with the Liberal caucus.

Mr Cordiano: Now I don't feel so bad, I say to the former minister. We're all in the same boat now.

All joking aside, you have raised some very good points and concerns that are legitimate. We need a comprehensive plan and a comprehensive vision for transportation in the GTA — the entire Golden Horseshoe area, actually; it goes beyond the GTA. I think the time has come to begin to put that forward, and we haven't seen that from this government.

Your point is well taken: Previous governments have made commitments and broken them. The former minister tells me — is that how he put it? — that the grand interruption of elections got in the way. Of course, we did it to ourselves, we interrupted ourselves, no prodding from anyone else. I think your concerns are well-founded. Will the extensions of the 407 be built, and what are the time frames for that? It's absolutely critical. If we go along with the very idea of privatization, it is as a result of our concern that these extensions be carried out, be constructed in a timely fashion.

We have concerns that extend beyond that, and that's why we're expressing those concerns here today. Again, the minister fails to put forward enough detail, as you have suggested he do with respect to the timing of the construction projects. We have concerns that go beyond that, but I would say that your concerns are well-founded.

What would like to see in terms of a timetable? Would there be, in Bill 70 itself, which is what we're here to discuss, stipulated times for the completion of the extensions?

1550

Mr McCracken: We've watched the 401 being widened for almost 10 years now. They are finishing off the final sections just immediately to the east of Brock Road. We are told there's no funding to go beyond that point. If the funding was available, we would expect, under normal circumstances, that the 401 would be extended through Ajax in the year 1999 and would probably hit Whitby no later than the year 2000, possibly 2001, and would hit Oshawa by the year 2002. That is not when we need it; we need it today. But reasonably, that's probably the soonest we could expect to see traffic

congestion relief from Oshawa into Toronto. Whether the 407 can be built in that time frame is questionable.

I can give you an example right now of a US corporation that has a contract with General Motors. If you look at Pickering, many of the industrial buildings in Pickering are used by suppliers to General Motors. Pickering is no longer an option for this company, because with just-in-time delivery to General Motors, they cannot deliver within a 45-minute cycle time from their plant to the assembly line. Pickering is too far away from General Motors to serve as a landlord for their requirements. That is terrible. Putting the 407 in doesn't solve that problem.

Mr Cordiano: The 407 is part and parcel of what we need to alleviate the flow of traffic off the 401. That would certainly help. This government has not made, since it was elected in 1995, any commitment to a comprehensive plan, and certainly they could have initiated the construction of the 407 back then; they could have started this process a lot sooner. Why do you think that got in the way? Furthermore, the fact is that the government has had revenues. We have seen a tax reduction in this province which now amounts to about \$5 billion worth of revenue that has been forgone. Those are the choices that have to be made provincially. The provincial government chose to have an income tax cut when there were other needs —

Interjection.

Mr Cordiano: We're talking about highways here today. I have the floor. You'll get your turn. Be patient. By the way, that won't get you into the cabinet either.

It's important to recognize that governments do make critical choices. This government decided to have an income tax cut. And yes, I am being partisan. I am being political, because this is a forum for that. At the end of the day, the highways do not get built when you have a \$5-billion tax cut.

I hear what you're saying today. The priority was to build the additional —

Mr McCracken: When you look at congestion within the GTA, there are areas where you can say that it would be nice to have more roads but they're not necessary.

Mr Cordiano: They're not critical.

Mr McCracken: We believe in Durham it's critical. The problem is that successive governments have tended to ignore the needs of Durham region. I think there's a political bent there. For years we were NDP when we had Liberal governments in Queen's Park. When we changed that, for some reason it didn't seem to do us any benefit. We voted against the government and it didn't get us roads. We voted with the government and it hasn't got us any roads. We're confused. Where to do we go next time?

Mr Cordiano: If you figure it out, let us know too.

The Chair: Mr Pouliot, please.

Mr Pouliot: I'm trying very much to be your friend, but somehow some people are more compatible and some other people on the other end are less compatible. On the friendly side, I very much valued your presentation. It's very much to the point: You've reached a crisis stage.

It's true that the 401 has for some time been oversubscribed. It's the busiest highway in North Amer-

ica. Three years ago we had the "honour" of surpassing Santa Monica as the busiest highway. You're quite right. If you build it, cars will come, cars will flock indeed.

It's well organized, well-thought-out, but it's an immense project. I will maybe bring it home by giving you an idea. Do you recall the bump on the Gardiner Expressway, once you get past the CN Tower, Ontario Place, and you're on your way to the airport? That thing has been there for years and years, and for months and months the magnitude of the project — if you take the Lakeshore, to give you an idea, \$1 million doesn't even bring you across the street there. So you're talking about a lot of capital dollars.

You mentioned the Liberals, you mentioned, unfortunately, the New Democratic Party, and you also mentioned the government of the day, the Progressive Reform — I mean the Progressive Conservative Party.

"The fourth paragraph of the government's press release on October 1998 states, 'The highway will be extended to Highway 403, the QEW in the west and ultimately to Highway 35/115 in the east.' What does 'ultimately' mean? It certainly does not mean soon." When these people tell you "ultimately," it means in the fullness of time. It means you should be so happy to live such a long life. And then you go on to say — and this surprises me from you; this is the unfriendly side — "If the government wants our support for Bill 70, if our MPPs want our support in the pursuit of their next mandate, we want to see a timetable clearly stated in Bill 70."

You're with the Durham real estate board. I want to thank you, because I was never aware that the New Democratic Party of Ontario received the support of the Durham Region Real Estate Board prior to our election. I apologize. I want to thank you very much for the support of the real estate board for the New Democratic Party. It must have been a first, Mr McCracken.

Mr McCracken: The real estate board has never endorsed any party. At this point in time, all the members of parliament in Durham region are members of the Conservative government, and that is the first time Durham region has elected an entire slate of one party. Oshawa-Whitby has traditionally, with the strength of the CAW, stood as an NDP stronghold. That was reversed. The Liberals have had successive strength in certain areas within Durham. But this is the first time one government has received a clear mandate from the entire region to do something.

Mr Pouliot: I hope they can deliver, sir.

Mr McCracken: So do I.

Mr Pouliot: If I were you, I would hold their feet to the fire and say, "You've made a promise, you've made a commitment, and I want to see some results."

There's good news. Durham was very much in the cards when the concept of Highway 407 was developed. It is of such magnitude that it takes a little time. In this case, you have ample proof that the project has not only started but will be continuing. A project of this magnitude can only be developed if you have a good partnership in terms of engineering, in terms of design, in terms of construc-

tion. We were talking, at the height of the recession, about 20,000 badly needed jobs, where the spinoff was that for every dollar you put in directly, indirectly you would eventually get \$2 back. They're of the same concept; I'm not going to disagree with my colleagues on that one. I think all systems are go in terms of the 407.

The difficulty we have, which we share with the opposition, is the method. We don't have enough guarantees to say yes to what we read. But in terms of the overall concept — and I say this candidly — I can only commend the people who are picking up the torch and going with it. We certainly disagree with them philosophically. Philosophically, we have more difficulties agreeing or disagreeing with our friends. They accept that, but philosophically we are in disagreement. That is all there is.

But in terms of the project, all three parties are saying, "Go to it, and go to it quickly," so the needs you identify here can be addressed. When you see detours, construction people at work, pavement taking place, the people of Durham begin to smile, because economic development is what it's all about, your just-in-time delivery, your door-to-door delivery, people being more competitive by virtue of 407. We're certainly in agreement with your presentation — minus the threat of whether you're going to vote for us or not.

The Chair: We have three members of the government caucus who have questions.

Mr Spina: Mr McCracken, thank you for the presentation. I'm as puzzled as you are, because in Peel county we had seven Liberal MPPs from 1985 to 1995, and we got the 403, the 410 and the expansion of the 401.

I would suggest to you, sir, that I think there are a few other dynamics that took place. I don't mean to make an excuse here, but I think we have to examine all the issues that impacted on Durham county. I think back to a marketing study that I researched and made a recommendation to the corporate body I was involved with at the time for branch offices. At the time, the Pickering airport was in full-blown proposal stage, and expropriation took place etc. The 407 was clearly an integral part of the Pickering airport development. I'm sure if you were around you would remember that. To lay blame on all the three successive provincial governments is a little narrow-minded, with due respect, sir, because I think a lot of the slowing down of the expansion of the highway system — or maybe its coming to a screeching halt — had to do with the cancellation of the Pickering airport project.

That doesn't mean that Durham should have been ignored forever. I fully agree with your statistical analysis and I fully understand your comment about, why are the numbers so different and why don't we have the highways on our side of the city? They are needed; I don't think anyone argues that.

To come to the present day, we have an alternative. One is to do what previous governments have done — we can build a highway tomorrow, float another \$5-billion bond, and it's done — or, in an attempt to try to use some fiscal conservatism, try to find a methodology by which

we can get it done. To the best of my understanding, this government has still not done it's job; we're not finished our mandate. We hope, and it's really a statement more than a question, that we will have the opportunity to have this thing on the books on the go before this government's mandate is up. We see this as the vehicle, and I'd hope that you would have input, perhaps, on the regulatory structure that would address your biggest concern, which is the subsidization and the toll rates in terms of the double payment between paying taxes and paying tolls.

1600

Mr Galt: It's interesting, our Liberal colleague talking about the tax cuts, that because of the tax cuts we couldn't do other things, when in fact it stimulated the economy. The revenue is coming in somewhere in the neighbourhood of \$6 billion more per year just because of those tax cuts. When they increased the taxes some 33 times and the spending doubled, they certainly didn't go and build any roads or having anything extra at that time. You can throw your tax cut and some of those comments around, but have a look at your Liberal government taking in something like \$3.9 billion a year in revenue from gasoline in the province of Ontario, and how much did they turn back? Over 10 years, only \$185 million. Talk to your own cousins in Ottawa.

Sir, thank you very much for your presentation. It's interesting that so far we've had — you're the ninth presenter, and four of the presenters have been pushing for the extension east. The other presenters have been pushing for extensions in general, but it's very obvious that we need to get this moving to the east. I represent Northumberland, so I'm also very interested and recognize the bottleneck at Brock Road; I get into it on regular basis both coming into and leaving the city.

We have an awkward situation in the east. When you get east of the GTA, not only do we not have the infrastructure, but the banks are not prepared to loan money to large industries. It's just not there, and therefore, to move the economy is particularly difficult.

Do you think normally, like in the west or the north, the infrastructure comes first and then the economy booms? Or did the economy boom and then the infrastructure had to go in to service it? Which really comes first in making things happen?

Mr McCracken: The growth in Toronto was conditioned by Pearson International Airport, which is infrastructure. Without Pearson, Markham and Vaughan would not exist as they do today. Because those communities grew, the roads filled in the rest of the infrastructure. Vaughan is the perfect example of that. There is no reason that Vaughan would develop if it wasn't for Highway 400, the 427 extension, the 407 and the airport.

Mr Galt: So possibly if Pickering Airport had flown — excuse the pun — 407 might have been there much sooner, or something similar to it.

Are you aware of any opposition in the Durham area to this extension?

Mr McCracken: Yes, not to the 407 per se but to the lack of consensus between municipal, regional and provin-

cial governments and representatives. They can't get their act together and decide where it's going to go, specifically access routes: Lake Ridge Road versus Brock Road seems to be the major headache, which seems to be a real —

Mr Galt: Not a big issue on environmental assessment as it relates to the Oak Ridges moraine?

Mr McCracken: If you're going to bring a road from 407 down to 401, to me, it makes more sense to do it through vacant farm land than through a built-up urban area. That's the difference between Lake Ridge Road and Brock Road.

Mr Hastings: Mr McCracken, with your industrial-commercial-real estate experience, how many industries or plants would you estimate we've missed or are about to miss with the extension not going through except ultimately?

Mr McCracken: In terms of 407 it's difficult to say. In terms of Durham region right now, if you talk to the investment community, if you talk to the major developers like Orlando, Runnymede, Invar, they're not prepared to put money east of the Rouge River. They perceive it to be an area that is a bad fiscal investment, and that's basically because you cannot service the GTA, the Toronto market, from Durham. The fact that they are not prepared to invest money means we have had very little development, which then means — it's a Catch-22 — industries that look to come to us don't have real estate they can lease.

Mr Hastings: So if we hadn't had the overextending back in the 1980s, we would have had some of that money provincially to do some of the things you are advocating. The Peterson regime spent at about 15% annually, compared to the provincial product that was coming in at about 3.5%. It's part of the accumulation of the frustration you're facing.

The Chair: On that note, our time is up. Mr McCracken, thank you very much for taking the time to come before the committee today with your perspective on this matter. We appreciate it.

Mr McCracken: Thank you for the opportunity.
1610

CANADIAN COUNCIL FOR PUBLIC-PRIVATE PARTNERSHIPS

The Chair: I now call representatives from the Canadian Council for Public-Private Partnerships. Good afternoon. Welcome. Please make yourselves comfortable. You have 30 minutes for your presentation, and hopefully there will be time for questions as well.

Ms Glenna Carr: I am Glenna Carr, president of the Canadian Council for Public-Private Partnerships. I have with me today Rocco Sebastiano and Mr Gordon Willcocks. Rocco is an associate with the law firm of Osler, Hoskin and Harcourt and Gordon Wilcox is partner with the law firm of McCarthy Tétrault. We also have our executive director, Jane Peatch.

I am not a lawyer, but as many of you know, I was at Queen's Park for many years as a deputy minister. It's

very nice for me to be on this side of the table for a change.

Let me just tell you a little about the Canadian Council for Public-Private Partnerships and why we are here. We are a non-profit, non-partisan organization. We were created in 1993 to increase the extent of infrastructure and public services which could be offered across this country bringing together the talents of both the public and the private sectors. Our main purpose is to see economic and social benefit for Canadians. We believe that both sectors possess strengths which, when combined, can enhance services that the public currently receives and will increase the level of service in the future in a more cost-effective way.

We are a national organization. We have representation from every province and every territory in the country and all three levels of government. We have 170 member organizations, about half and half from the public and the private sectors, representing thousands of individuals across the country. Our headquarters are here in Toronto. Our purpose is to serve to educate and increase public understanding of the value of public-private partnerships, including publishing, research on best practices, case studies, and providing expert advice and public fora.

We brought today and would like to table with you best practices guidelines on initiating contracts and contracting with the private sector. Our organization is guided by a board of directors from across Canada and chaired by the Honourable Donald Macdonald.

We're here today to express our support for Bill 70. We believe that the legislation will serve and protect the interests of the public, that it has an intent to allow for creative solutions to be brought forward and that it will deliver an extended and safe highway to the public. We think it's an extremely positive step and one that reinforces our basic premise, that governments can achieve very strategic initiatives without all of their fulfilment falling full-weight on the general taxpayer.

The private sector can play a very effective role and can become part of the network of providers that will make those plans a reality. Our comments here today are somewhat technical and do relate to the details of the legislation, but we do want to indicate our support for it.

Mr Sebastiano and Mr Willcocks have reviewed the legislation in detail — as I said, they are experts and lawyers — on behalf of the council, and Mr Sebastiano will speak to the amendments that we believe would strengthen Bill 70.

Mr Rocco Sebastiano: I'd like to thank you in advance for the opportunity to be here before you.

I'd like to read an excerpt from the council's best practices guidelines which I think sets out the theme of our comments on the legislation. The quote is as follows:

"Public-private partnerships are all about bringing the strengths and resources of the public and private sectors together in a way that results in public objectives being met in the most economically efficient — that is, least-cost — manner. In economic theory terms, public-private partnerships are based on the premise that competitive

markets would generally provide greater efficiencies and productivity in delivering infrastructure to end-users than can be achieved through public ownership and delivery.”

A successful P3 — to use that term, rather than “public-private partnerships” all the time — is achieved where the private sector is permitted to bring innovation, creativity and efficiency to bear on a project, particularly during the procurement process. This innovation and creativity may be in the financing, may be in the engineering, in the operations, management, maintenance and rehabilitation through the concession period of the project. The traditional procurement methods, like simply going through a prescribed tender process, does not encourage or generally doesn’t permit innovation and creativity to come to bear on a project and hence does not necessarily allow these efficiencies and productivity to come to bear.

In looking at new procurement methodologies, our sense is to focus on, what are the end results? It’s less on process, about how you go about achieving the end results, and more on, what are the end results, what are the goals to be achieved — whether it be public safety, whether it be consumer protection — and to allow the private sector to come to the table and propose innovative ways of perhaps achieving those goals.

It is in this light that we’ve reviewed Bill 70. We’ve tended to focus our comments on a number of sections, not many, that highlight our concern in that respect and ways you can perhaps look at the bill in improving the procurement process overall.

The first two sections we’d like to comment on are sections 15 and 16. These two sections are clearly intended to protect the user of the highway from abuses, perhaps, in the toll collection process. We agree that the government should be concerned about consumer protection policy, but we believe the bill should set that out as an end goal and that the details and the process by which these goals are achieved should be left to subsequent regulations or agreements between the ministry and the successful private-sector proponent.

For example, if you turn your attention to section 15(1), it specifies that “a toll or fee becomes payable when an invoice for it is mailed...and interest on a toll or fee begins to accrue 35 days after the invoice is mailed.” This section presupposes that mailing will always be the method used in the toll collection process. Given the current changes and future changes to direct account debits, other forms of electronic billing, this section, as an example, doesn’t give the type of flexibility to permit innovation and bring down the costs of toll collection.

Section 16 specifies in great detail the toll collection process, the dispute arbitration process and those systems to be used by the owner in collecting tolls on the highway. Once again, it’s our view that the legislation should focus on the end goal, which is consumer protection. It should allow the private proponent to come forward and propose a toll collection process and system which is accountable and subject to public sector review and approval. It’s very likely that the private sector proponent may have a more

efficient and innovative toll collection process than is envisaged in section 16.

The next section I’d like to briefly speak on is section 26. Section 26 requires the private sector operator to control the use of highway 407 in accordance with the current and future policies of the Ministry of Transportation. In addition, the section permits the Minister of Transportation to use the Highway 407 lands to manage transitways and objects and structures for highway or transportation purposes. Subsection (3) of that section also provides total control of ancillary revenue opportunities on the highway to the Minister of Transportation, without consultation with the minister for privatization, without consultation with the successful private sector proponent.

The end result of that section is that it permits the Minister of Transportation to prescribe the use of the 407 lands and the adjacent lands in a manner which the private sector may view as inefficient and which may affect the economic feasibility of the project. The private sector may wish to propose sources of ancillary revenue which may permit a more creative financial structure and which, in turn, provides greater efficiencies to the province and to the end users of the highway.

All this, we believe, can be accomplished without sacrificing the government’s goal of ensuring public safety or other policy objectives of the Ministry of Transportation.

The next section I’d like to speak on is section 28, which requires a private sector proponent to manage the highway in compliance with what is a defined term, being “ministry safety standards.” The difficulty with this is that the term “ministry safety standards” is defined to potentially include all policies and all regulations and rules of the ministry, no matter how remotely related to public safety objectives. Now, the difficulty with this is that if you were to take the opportunity to review the ministry’s standards and specifications, they don’t simply set end results. They deal with process specifications, methodologies and the methods by which you achieve those goals. It’s not only in the design process but also in the way the highways are operated, the way they’re maintained and the way they’re managed.

Applying the ministry standards across the board without consultation with the minister for privatization and the successful private sector proponent would not provide an opportunity for the private sector to propose more efficient and cost-saving operations and management and maintenance techniques which would, at the same time, still achieve the government’s goal of ensuring public safety.

1620

Section 29 is another section we’d like to briefly comment on. That talks about the Ministry of Transportation’s rights to broad search and inspection powers, to come in and inspect to assure itself that the private sector proponent is operating the highway in accordance with the ministry’s safety standards. Those sections don’t require the minister to act in any reasonable manner and, quite frankly, don’t provide the private sector the opportunity to

come forward with what may be less intrusive, less costly, more efficient procedures to achieve the government's goal of ensuring compliance with the standards.

Last, I'd like to touch briefly on section 56, which is the section which allows the government to pass regulations under the act. Clearly, we agree that there's a purpose and a necessity to have regulations to be enacted at some later point to carry out the purposes of the legislation, but we would suggest that there be some philosophy or regulatory philosophy set out that the regulations are intended to require also performance measurements and end result objectives, and once again, as we've commented on the bill, should not prescribe or dictate processes or methods without further consultation both with the minister and the private sector proponent.

Briefly, those are our comments. Our intention is to promote successful public-private partnerships. These successes are achieved where the procurement process undertaken by the public sector permits the private sector to bring innovation and creativity to the table. This innovation and creativity will bring efficiency gains which will benefit the public sector by maximizing value and benefit to the end user by reducing costs. We've provided you with a few examples of how Bill 70 can be improved to achieve a more successful public-private partnership for Highway 407.

Once again, thank you for the opportunity to be here before you. Although we have not proposed any technical wording for amendments in this document, we would be available to do if so requested.

The Chair: Thank you very much. There are just over 5 minutes for questions from each caucus, beginning with the NDP caucus.

Mr Pouliot: Thank you very kindly for your presentation. It's certainly some food for thought. Glenna, if I may, with high respect, it's certainly a renewed pleasure. Administrations of different stripes have valued your expertise and dedication and certainly the standards you adhere to in terms of ethics. Your contribution is certainly not lost.

If you find it different to sit on a different side of the table, I share in that experience. I find it, in my case, quite difficult to sit on this side of the table. In fact, the worst day when you are in government is far ahead of the best day when you're a member of the third party.

You make me nervous by way of your presentation. Conformity with safety standards: I need your help. When we're talking about safety standards, we all know the hallowed, sacrosanct issue being discussed. Most people would agree that the government would have the first and final say. If one is to adopt techniques that could, while adhering to the standards, save money or make the project more expedient, cheaper, more affordable, so be it.

I trust that's already being done to some extent or has been done with Canadian Highways International, which was the successful bidder, where there was constant liaison, communication, between MTO and its "standards" and the innovations or the alternatives being

proposed by Canadian Highways International. I think it went rather well.

I want to bring you back to another section, third line, page 2: "This innovation and creativity may be in the financing, design/build or operating aspects of an infrastructure project." We couldn't be more in agreement. It's the new way of doing business in terms of major infrastructure projects. All three parties are on record as having acquiesced in this new method of doing business for Ontario.

One snag we experienced with the first phase of 407 was the financing aspect. Presenter after presenter mentioned that, all in all, the financing is part of the project. I don't usually read financial pages, but this morning I made an exception by way of the presenters. It indicates, on the 25-year coupons or debentures, the spread between sovereign, provincial and municipal. We're talking about a difference of 75 to 100 basis points.

When it comes to a project like the extension or expansion of Highway 407, you're looking at \$1.5 billion to \$2 billion. We know that the first phase — smaller, 69 kilometres — costs \$928 million plus the toll. I think I remember signing that document. So we're looking at \$15 million to \$20 million per year in terms of carrying costs — per year. With privatization, this would be passed along to the tolls. We're all in favour of expanding the 407, but our problem is that while we search that port, we take on different routes.

Ours is a matter of saying, "Yes, a new partnership, and preferably go a little more with the private sector." But in terms of selling the infrastructure — you're too ethical to say the following, but I maybe have immunity; I'm in the political arena here. What they will do — and maybe there's nothing wrong with it — it depends the way you look at things — is that they will take the billion dollars, they will put it against the deficit and they will say, "We'll wait for the federal budget, make some adjustments to the provincial budget, debate the budget, issue the writs, and begin to walk on water and say, 'We've arrived,'" and in the meantime they're selling our flagship.

I'd like to hear your comments with a focus on safety. It makes me nervous. I believe that governments are already listening. I wouldn't wish to give more without strong guarantees that the public — I'm not imputing motive. They're all good builders and they all want to adhere to standards, but I want to be on the side of the angels when it comes to safety.

Ms Carr: Perhaps I could comment both on the safety issue and on the financing aspect and then turn it over to my colleague. With regard to the safety issue, what we're basically trying to say is that in legislation the government must protect public safety and must ensure standards, but we don't think you necessarily want to get bound up in the detail of the specific standards in the legislation. That is because the determination of what is safe can change over a period of time and the conditions can change. What might be appropriate in terms of speed, in terms of access etc, may vary over time.

With regard to the issue of financing, the day before yesterday, Nova Scotia Highway 104 was awarded a national award by the Canadian council for innovative project financing. It is also a toll highway. They have managed to transfer risk, but the governments, both federal and provincial, are maintaining some role in the financing.

1630

The innovative thing about public-private financing is, are the risks actually transferred from the public to the private sector? If risks are not actually transferred or shared in a predetermined fashion, then probably you're quite right, it is cheaper to do the financing strictly by government debt. The issue then is, what are you forgoing in terms of other services and other infrastructure that you might produce? It's a question of difficult choices.

Mr Pouliot: Excellent point.

Mr Spina: Thank you, Ms Carr and gentlemen, for your presentation. It was enlightening, because you've approached it in a very positive manner, with an indication of, "We know this is going to happen; we want to help you make sure it happens as best as possible." We appreciate some of the recommended amendments.

The argument that our colleague from the official opposition puts forward is that he feels that the privatized highway should be responsible for paying property assessment taxes like any other business. That's out of one side of his mouth, and out of the other side of his mouth he's then also concerned that the toll structure will result in runaway costs to the consumers who will use the highway. Well, of course, if one can go with the other. But I wondered what your opinion was of this. We have some idea of what you've said with respect to risk. Part of our objective is to transfer the risk from the provincial government to the private sector operator. What is your thought on the property assessment issue, keeping in mind also the structure Mr Sebastiano had recommended regarding the tolling methodology?

Mr Sebastiano: If you were to burden the road with property taxes, that would have to be reflected in the ultimate financing of the highway, because that revenue has to come from somewhere. Ultimately, if that were a burden on the project it would have to be passed on to the end-user. Currently, the 407 is not subject to assessment and the highway seems to be a great success, notwithstanding some hue and cry at early points about the level of the tolls on the highway. But people seem to have accepted it, and the level of toll revenue on there is quite high.

The additional problem with increasing the debt load on the highway and increasing the toll rates is that it will affect the projections on what will be, on a go-forward basis, the amount of volume you'll get on the highway. Obviously, the more you charge people, the less likely people will take the highway.

Ultimately, it affects the economic feasibility of the project. That's clearly a decision that this government needs to make, whether it feels it's appropriate to do so.

Mr Spina: What would your recommendation be?

Mr Sebastiano: I can only speak on my behalf.

Mr Spina: All we're asking for is your opinion.

Mr Sebastiano: My opinion would be that it would not be appropriate to add additional cost to the project above the design-build obligations that will be built into the project on the 407 east and west, because ultimately the end-user will have to bear that cost. I don't know that the municipalities were necessarily expecting to achieve that windfall.

Mr Hastings: Mr Sebastiano and Ms Carr, do you subscribe to the thinking, even in this bill, that there is still the overarching hand of bureaucratic detail that's quite wide and broad? I take it from your comments and from your amendments that there's too much detail for the devil, that there should be a Chinese wall or whatever specific techniques of limiting that influence of government, especially in the regulatory powers.

Ms Carr: Mr Hastings, knowing your presence on the Red Tape Commission, I think you're an appropriate person to ask this question.

We believe there are some details that are too specific to be in the legislation. My colleague Mr Sebastiano has mentioned two of them: the mailing of the notices and the specificity around the 35 days. Technology will simply overtake that. Why would you tie your hands by specifying that in the legislation when that really should be left to regulation and change in practice? We believe there is a little too much detail and specificity in the legislation, and some of those things would be better dealt with in regulations.

Mr Sebastiano: One additional comment: Section 6 of the legislation provides the opportunity for the successful private sector proponent and the minister of privatization to actually enter into agreements, not only now but presumably on a going-forward basis, which would be intended to achieve those results and goals set out in the legislation. The legislation, I believe, contemplates an opportunity to deal with some of these details once you've allowed the private sector to come forward and satisfy the minister, whether it be the Minister of Transportation or the minister of privatization, that they can achieve those goals and execute those agreements and move forward on that basis.

Mr Cordiano: You've piqued my interest. There's quite a number of things I would like to discuss with you, and I don't know that we'll have all the time necessary, but let me try to deal with some of the issues.

First of all, on the question around property taxes, Ontario Hydro and CN and CP pay costs in lieu, which is a form of property taxation. From our calculations, we've determined that the same thing for the 407 would be approximately \$90 million per year. That's how much revenue would be forgone, given the exemption that exists in Bill 70. That's my first point. Obviously, you don't agree with me and you agree with the bill that this revenue should be forgone. Then I ask you, what's to happen when Ontario Hydro is to be privatized? Should they also receive that exemption? Should the ultimate private owners receive that exemption?

Ms Carr: We'd be happy to come to the hearings on Ontario Hydro privatization and speak to that at the time.

Mr Cordiano: You've very adeptly avoided answering the question. I see that your skills as a deputy minister are still intact. Let me go on.

Mr Sebastiano: If I could quickly respond, the issue comes down to the fact that currently the municipalities do not receive that revenue. The current tolls being charged on the highway do not reflect a portion which is being paid to municipalities in lieu of anything.

Mr Cordiano: No, that's right.

Mr Sebastiano: Ultimately, if that were built into the structure, it would be another form of taxation on the users of the highway.

Mr Cordiano: My point is, you can make the same argument for Ontario Hydro users, the same taxpayer. If you're trying to create a model for privatization here, it's important to recognize that you are setting a precedent.

Mr Sebastiano: But I think you're talking about two different commodities and a much different marketplace. To draw the analogy is a much more complicated one than we probably have time to respond to right now in the few minutes we have here.

Mr Cordiano: I don't think so. The 407 would be a near monopoly or virtual monopoly, similar to the Ontario Hydro utility. It's a monopoly and it's very similar. There isn't anything that would compete with 407.

Mr Baird: Highway 401.

Mr Cordiano: No, it doesn't. Excuse me. You're not getting the same level of service. You're not getting the same kind of access that you are on the 407. That's why it was built.

That point being made, I want to go back to another point with respect to risk transfer. There's a study done by the Privatization Council in Washington, DC. They suggest that one of the main reasons for privatization of projects like highways is so that property taxes will accrue to the state — local property taxes to the municipalities, the state etc. In addition to that, one of the other benefits is with respect to transferring risk to the private sector. However, they suggest that there would be a great deal of due diligence required in order for that to take place.

My concern right now is that the public has taken most of the risk with respect to the construction and operation of the new technology on Highway 407. Those upfront costs were absorbed by the taxpaying public, the Ontario

treasury, and if the technology had proved to be a failure, we would have been stuck with some sort of elephant. Luckily, it wasn't; my compliments to the former minister and obviously the current government for getting it running and operational — not without some difficulties. This also ties in to the question of safety concerns, minimum safety standards. If you will recall, the opening of the 407 was delayed because of concerns around safety: Was the highway ready? The OPP voiced those concerns, as did others, including the auditor of Ontario.

Those are some of the things that concern me, like my colleague Mr Pouliot, with respect to maintaining the ministry standards. On that part I don't know that I agree with you, because I think Bill 70 specifies that the standards will be maintained.

Ms Carr: We agree with that. The problem is that right now it says that every single safety standard will apply to Highway 407. Highway 407 is a specific piece of highway constructed for a specific purpose in a specific geographic area, carrying certain kinds of traffic. It's very different than a highway would be in northern Ontario, for example. The point we were trying to make, and maybe we weren't clear enough, is that there should be safety standards and they should be specific to that highway. It's best defined in regulation.

The Chair: On behalf of all the members of the committee, I thank you for coming before us. You are our last presenter this afternoon and it was a very interesting presentation.

Colleagues, I would like to draw your attention, if I may, to some special guests in the audience. We have some members of Parliament and of the Senate from Ireland, specifically Mr Ahern, Mr Dennehy, Mr Belton, Mr Rabbitte, Mr Finneran and Mr Judge. We welcome you very much to our committee hearing this afternoon. I speak on behalf of all the members of the committee. I hope you're enjoying your day at our Parliament and your visit to Ontario. Welcome.

Colleagues, that was our last presenter of the afternoon. We will reconvene tomorrow at 9 o'clock for clause-by-clause consideration of this bill. Arrangements are being made for you to receive the amendments.

Any further business? Seeing none, we are adjourned. We'll reconvene tomorrow at 9 o'clock.

The committee adjourned at 1644.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Joseph Cordiano (Lawrence L)

Mr Gilles Pouliot (Lake Nipigon / Lac-Nipigon ND)

Mr Mario Sergio (Yorkview L)

Mr Joseph Spina (Brampton North / -Nord PC)

Clerk / Greffier

Mr Viktor Kaczkowski

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service

CONTENTS

Thursday 19 November 1998

| | |
|---|-------|
| Highway 407 Act, 1998, Bill 70, <i>Mr Sampson</i>/ Loi de 1998 sur l'autoroute 407, | |
| <i>projet de loi 70, M. Sampson</i> | R-533 |
| Statement by the minister and responses | R-533 |
| Hon Rob Sampson, minister | |
| Mr Joseph Cordiano, MPP | |
| Mr Gilles Pouliot, MPP | |
| Regional municipality of Halton | R-539 |
| Ms Joyce Savoline | |
| Canadian Automobile Association Ontario | R-543 |
| Mr David Leonhardt | |
| Town of Markham | R-548 |
| Mr Gord Landon | |
| Regional municipality of Durham | R-552 |
| Roger Anderson | |
| Town of Oakville | R-557 |
| Ms Ann Mulvale | |
| Ontario Trucking Association | R-561 |
| Mr Michael Burke | |
| Mr Stephen Laskowski | |
| Greater Toronto Home Builders' Association | R-565 |
| Mr Vincent Brescia | |
| Greater Peterborough Chamber of Commerce | R-570 |
| Mr Don Frise | |
| Mr John Bowes | |
| Durham Region Real Estate Board | R-574 |
| Mr Ted McCracken | |
| Canadian Council for Public-Private Partnerships | R-578 |
| Ms Glenna Carr | |
| Mr Rocco Sebastiano | |

CA20N
XC13
576

Government
of Ontario



R-16

R-16

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Friday 20 November 1998

Journal des débats (Hansard)

Vendredi 20 novembre 1998

Standing committee on resources development

Highway 407 Act, 1998

Comité permanent du développement des ressources

Loi de 1998 sur l'autoroute 407

Chair: Brenda Elliott
Clerk: Viktor Kaczkowski

Présidente : Brenda Elliott
Greffier : Viktor Kaczkowski

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Friday 20 November 1998

Vendredi 20 novembre 1998

*The committee met at 0909 in committee room 1.*HIGHWAY 407 ACT, 1998
LOI DE 1998 SUR L'AUTOROUTE 407

Consideration of Bill 70, An Act to engage the private sector in improving transportation infrastructure, reducing traffic congestion, creating jobs, and stimulating economic activity through the sale of Highway 407 / Projet de loi 70, Loi visant à intéresser le secteur privé à améliorer l'infrastructure des transports, réduire la circulation engorgée, créer des emplois et stimuler l'activité économique par la vente de l'autoroute 407.

The Chair (Mrs Brenda Elliott): Good morning, everyone. Welcome to the standing committee on resources development. We are gathered this morning for the purposes of clause-by-clause consideration of Bill 70, the Highway 407 Act.

Before we begin, I think Mr Yeager would like to make a brief report to us.

Mr Lewis Yeager: Good morning, committee members. You have before you the summary of the proceedings that we prepared. This includes all of the people who appeared before you in the hearings yesterday, as well as a number of written briefs that were sent to the committee for consideration before the committee's deadline. We managed to get almost everything in.

As you can see from the table of contents, it's organized in the same order as the bill, by the major topics that are in your compendium. So it should be quite easy to find recommendations or comments that relate to the various sections of the bill.

The office of the Information and Privacy Commissioner did not appear before you, but they did send a brief with quite a number of comments relating to section 45. So you'll see under "Other laws" a section there that details those. There were quite a number of recommendations.

On the back of the little summary report there is a list of the abbreviations that are used to identify the various groups and individuals that appeared before you to help you tell who they were. They're identified by acronyms after each one of the comments in the report.

Unless you have any questions, I'll turn you over to the good hands of legislative counsel.

Mr John Hastings (Etobicoke-Rexdale): Under the Information and Privacy Commissioner's recommendations, on page 1, at the bottom, it points out that there

ought to be scrutiny by the office of the Information and Privacy Commissioner to examine the draft contract, but there isn't any specification, from what I could see in her submission, for a time frame as to when that ought to be returned.

In other words, the contract could be signed, whoever the bidder is, for the 407. It goes to the privacy office for examination, as to whether there are sufficient safeguards on the information and data that could be transcribed for the use of the transaction between the consumer of the service and the provider, but there's no date time from the commissioner. I'm wondering if you have any comments on that. In other words, that contract could be there for two, three months after it's signed, maybe longer.

Mr Yeager: I don't have any information beyond that which they sent us in their written submission. Unfortunately, they didn't appear before your committee to answer that type of question. But I don't have any additional information beyond that which is in the written brief and I'm not sure that they dealt with that timing aspect.

Mr Hastings: Madam Chair, when we get to the appropriate section of the act, I would like to see how we would deal with that specific item.

The Chair: OK. Mr Yeager, thank you very much for your work, very prompt. We appreciate it.

Colleagues, you have before you a summary of all the amendments and they are numbered, which will be easy for us to refer to as we go through this. Just to refresh your memory, I will read to you the section from the orders of the day of November 2, and I quote:

"That, on the day designated for clause-by-clause consideration of the bill, the committee be authorized to meet until completion of clause-by-clause consideration;

"That, at 12 noon on that day, those amendments which have not yet been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill, and any amendments thereto. Any divisions required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127(a)."

We will continue this morning with a full discussion of all the amendments. Without any further questions or comments, we'll begin right away.

Mr Gilles Pouliot (Lake Nipigon): On a point of order: I shouldn't be appalled or shocked, but truly, this is consequential indeed. It's the first privatization endeavour from this regime.

We've had closure. We were shackled, handcuffed, muzzled in the Legislature. They moved closure on us, your government did. We've had one day of public hearings on a project, split or not, that will amount to \$1.5 billion to \$2 billion. It will be the largest capital project historically in the province of Ontario.

And now we have 24 amendments: four submitted by my distinguished colleague and friend from the opposition; we have three; the incompetence of the government is again reflected with 17 amendments. We have less than three hours to debate, to assimilate and blend with it, to digest the recommendations from the privacy commissioner.

This is not a semblance of democracy. This is not the ability, the opportunity for elected members to discuss the subject matters at hand. It's not the first time. In this case, it is becoming habitual. Life with the Progressive Conservatives begins to resemble the life — I'm not going to say Franco, Salazar, and the list is endless, Mobutu, Pinochet, but my Lord, give us a chance to discuss these things.

In conclusion, you have seven bills dealing with property taxation. Each and every one of those bills was there to correct the bill preceding it. Get your act together. I know the revolution is in a hurry, but when you're in a hurry you get tired, and when you're tired you make mistakes. Can you not do things right? You have 17 amendments at second reading, and then you're giving us two hours to debate third reading.

The Chair: I think we should get right at it, then. If you truly want to debate these amendments, we should get right at it.

Mr Pouliot: Madam, we have rights and points of order. You can rule me out of order. If you don't want to recognize my points of order, read the statutes.

The Chair: I think it is important, though, for the record —

Interjections.

The Chair: Order, please. It is important to be noted for the record that this committee did hear every single presenter that wished to appear before this committee.

Mr Joseph Cordiano (Lawrence): That isn't the issue, Madam Chair. On a point of order: The issue really is —

Interjection.

Mr Cordiano: I have the floor, if you will excuse me.

Mr Doug Galt (Northumberland): You don't interrupt other people, either.

Mr Cordiano: Do I have the floor, Madam Chair?

The Chair: Please, go forward.

Mr Cordiano: The issue really is one around the number of government amendments. This was not anticipated. At no time, when the discussion took place around having the subsequent day, the following day, for consideration of clause-by-clause was there any intention on the part of the government or any indication to opposition

members that there would be 17 amendments. That is quite extensive for a bill of this size. That is the point that my colleague is making.

Mr Pouliot: You can't deny that there was a package this morning.

Mr Cordiano: There is quite a significant number of amendments. It is very difficult to go through these with any degree of certainty that what we're talking about is correct or accurate. Tell me that isn't the case. You're all members of this Legislative Assembly. Tell me you've had enough time to absorb this and then we'll proceed. Tell me the truth.

Mr John R. Baird (Nepean): I would argue that this is not a point of order. I certainly received a package of amendments last evening and I stayed in the office until quite late reading them. I met this morning with at least one of my caucus colleagues and officials to discuss them. The 17 amendments presented, some of which are so simple they involve striking one word from a section, are simply there to make some small changes. There are other substantial amendments which were based on the input that we heard: the privacy commissioner's comments. Officials have met with her and we certainly reflected on her submission. I think we go 90% of the way to dealing with the concerns that she had raised, so they're quite substantial.

In terms of public hearings which the member for Lake Nipigon mentioned, we heard from every group that wanted to appear. We even, by unanimous consent, cancelled half the hearings because we couldn't find any more groups to come forward to discuss. We listened to every single person who wanted to come, to the point where we even got Liberal and NDP agreement to cancel half the hearings because we didn't have enough people wanting to come forward.

With respect to the issue of closure, this government has made no changes to the rules with respect to closure. The rules under which we currently operate in those areas were authored by the previous NDP government, and that's the reality, however you'd like to interpret it.

Mr Pouliot: The reality, sir, is that you invoked closure more often than the previous government. That's the fact.

Mr Baird: You wrote the rules, sir.

0920

The Chair: If I may, please, comments directed through the Chair are most appropriate. Are there any —

Interjections.

The Chair: Order, please. Colleagues, we have work before us this morning. I suggest we get underway. As the Chair, I would ask, are there any amendments to this bill that wish to be placed?

Mr Baird: I have an amendment to subsection 1(1). I move that the definition of "holder" in subsection 1(1) of the bill be struck out.

Just briefly. "Holder" is a defined term in the Highway Traffic Act. In terms of working with legislative counsel and others, we wanted to include not just "holder" but the

people who pay the tolls, the second category, and that's why that change was proposed.

The Chair: Further discussions or comments on this amendment? Seeing none, I put the question. Shall this amendment carry? All those in favour? All those opposed? This amendment carries.

We have another amendment before us, a government amendment.

Mr Baird: I move that the definition of "validate" in subsection 1(1) of the bill be struck out.

"Validate" is a term used in the Highway Traffic Act and the government's view is that the dictionary definition is quite fine. It's just a small amendment to make the bill clearer and more reader-friendly.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Any further discussion to section 1? I see no further amendments to section 1. Shall section 1, as amended, carry? All those in favour? Opposed? This section carries.

Section 2, there are no amendments before us. Neither are there amendments to section 3 or section 4. Any questions or comments on those three sections?

I put the question. Shall sections 2, 3 and 4 carry? All those in favour? Opposed? Those three sections carry.

We have a proposed amendment to section 5.

Mr Baird: I move that section 5 of the bill be amended by adding the following subsection:

"Corporation, Crown agency

"(2) A corporation incorporated under clause (1)(d) shall be deemed to be an agent of the crown in right of Ontario until its shares have been transferred by the minister for privatization."

This is simply a transitional amendment. If, in the discussions surrounding the privatization, the best option is deemed to be a share deal and it requires a reorganization of the existing corporate framework, it would fill the gap between the time the reorganization occurred and the privatization, which, albeit short, would require clarity.

The Chair: Further discussion or comment on this amendment? Seeing none, I put the question. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Any further questions or comments to section 5? Shall section 5, as amended, carry? All those in favour? Opposed? Section 5 carries.

We have a Liberal amendment proposed for section 6. We should deal with section 6, as it is proposed in the bill, first, and then we'll deal with the amendment.

Are there any questions or comments to section 6, as proposed in the bill? Seeing none, shall section 6 carry? All those in favour? Opposed? Section 6 carries.

We now have a Liberal amendment that we should deal with.

Mr Cordiano: This amendment simply deals with the provision to enable —

The Chair: Sorry to interrupt. You should read it into the record.

Mr Galt: Madam Chair, on a point of order: I'm confused on the sequence here. We have already passed section 6 and now we're going to try an amendment.

The Chair: This would be a new section to the bill. I get confused myself.

Mr Galt: OK. Rather than a change, it's an addition?

The Chair: Yes.

Mr Galt: It had nothing to do with what's being added; it had to do with procedure.

Mr Cordiano: It's adding to the bill.

Mr Galt: Go ahead.

Mr Cordiano: I move that the bill be amended by adding the following section:

"Review by Provincial Auditor

"6.1 Despite any provision in this act, the minister shall not transfer the following unless the Provincial Auditor has reviewed the terms of the transfer and is satisfied that the consideration to be received by the province in exchange for the transfer equals the fair value of what is being transferred:

"1. Highway 407 lands, assets comprising or relating to Highway 407 or interest in those assets.

"2. Shares of a corporation that owns Highway 407 lands, assets comprising or relating to Highway 407 or interest in those assets."

This is very important for the Ontario public to be satisfied this is a deal that is going to be done with regard to value for money, with regard to fairness, with regard to ensuring that all parties have been treated fairly, that this deal can be consummated with a great degree of transparency. I think it would serve everyone's interest to have the auditor review this so that this, being the first deal that's done with respect to privatization, is done in a fashion in which we can move forward and say without any questions that this was a deal done properly, with integrity, with transparency and that the public interest was well served.

Mr Pouliot: I'm speaking in favour of the proposed motion by the Liberals. Over the years there has been an ongoing transition — referring here to the mandate of the Provincial Auditor, who is the ultimate or certainly the recognized authority — from financial audit to value-for-money audit. I know I'm being repetitious, but please allow me to mention briefly that this is again very consequential. You are breaking new ground, and it's important that the taxpayers of Ontario receive the OK from the Provincial Auditor to say, "Yes, the province did get value for money when it sold Highway 407 to the private sector." We will be supporting the motion.

Mr Galt: I'm interested in the comment of the member from the NDP that it's breaking new ground. Indeed it would be breaking new ground if the government started directing the auditor as to what the auditor should or should not be doing. I don't think the government of the day or opposition parties have any right to give any direction to the auditor. The auditor does have a responsibility for all these activities, but I have a lot of faith in our auditor and I'm sure that he or she will investigate this particular transaction.

We talk about what's a fair price. A fair price is what a willing buyer is prepared to spend, in this case in the bidding process, the one that's prepared to spend the most. There's no question that the government has evaluated and knows the cost of this project, and it's not going to be sold at some kind of bargain basement price; it's going to obtain a reasonable price before it's going to be sold. We have those safeguards in there.

I heard the Good Roads convention say that this was going to be a private enterprise. If the previous government had carried it out that way, we wouldn't even be here today.

Trying to direct the auditor as to what they should be doing I think is very much out of order.

Mr Cordiano: You misunderstood what this is all about. This is not directing the auditor; this is giving the right to the auditor to do a value-for-money audit, which he does not have. He may examine the financial books of the province, but he cannot do a value-for-money audit. It would be very difficult for him unless it was permitted by this act.

0930

Mr Hastings: I find it passing curious that our friends opposite are interested in this concept of value-for-money auditing and that they've caught the religion, so to speak, in the last few years because they see how the trend of public expenditures is going and the thinking of the public regarding public and governmental expenditures.

In my estimation, if there were ever a problem with this enterprise, there is the public accounts committee, and there are other ways in which the government of the day in the future can request that the auditor look at all of these enterprises.

I saw this occur through the public accounts committee three years ago when the auditor was requested to undertake a value-for-money audit of children's mental health services vis-à-vis group homes versus the more traditional institutional approach, and I'm sure that the public accounts committees of the past have also made varying requests throughout the years when the members of that particular important committee saw the necessity for that kind of an audit to be undertaken pre-examination, and I think we need to leave considerable flexibility to the public accounts committee as the vehicle by which these types of enterprises need to be looked at.

In my estimation, the amendments as they're set out and proposed on other items are more than adequate. I think this particular amendment will clog up the movement to getting this project underway, as was cited by at least six of our 10 deputants yesterday and by some of the letters we see on file with the clerk, so I don't see the necessity for what the members opposite are proposing in this context.

Mr Cordiano: Let me try and explain it to you.

Mr Hastings: It's not a matter of misunderstanding. I can read just as well as anybody else what the intent is here.

Mr Baird: I certainly agree with my colleague from Lawrence on the need for the Provincial Auditor to have

the right to audit any part of the government of Ontario, so on that angle there's no disagreement.

I do have a concern with respect to the Provincial Auditor's getting involved before he conducts his audit. According to his documents, he feels his independence is very important. Just look at his last annual report where he says:

"The Provincial Auditor and staff of the office are independent of the government and its administration. Our independence is a safeguard which enables the office to fulfill its auditing and reporting responsibilities objectively and fairly."

I have a concern that if he conducts the audit during the fact and then is required to do so or chooses to do so after the fact, he will be auditing his own work. That does raise, not 100%, but that does raise the matter of the independence that he would be able to bring to the table to audit the deal once it was done, not just a proposed deal. Essentially he'd be auditing himself, and it's important that we have an independent auditor who has the ability to review the government's financial dealings after the fact, and I wouldn't want to see that compromised.

Obviously the minister for privatization and the government have a terrific number of process advisers and auditors to oversee the process specifically on the fairness issue, to ensure that there is no conflict of interest, and I think the government has gone to great lengths to build in a good number of safeguards and retain some excellent financial advice.

We have the benefit of the 1996 auditor's report where he went on at great length in terms of talking about the operational risks, there being only two bidders, looked at the benefits. He made some clear recommendations on future RFPs, which have been extremely helpful to the government in this process. He talked about toll revenue projections and the need to strike a better balance between risk and reward. That advice from his audit of the original deal has certainly been helpful to the minister for privatization and the government on this issue.

The government of the day is of course politically accountable for the decisions, and obviously the minister has gone to great lengths to say that this is a proposed privatization and that at the end of the day, if there is not value for the taxpayers in the process, he would not proceed. I think he has gone out of his way to say that.

The auditor, in his last report, certainly went into a good number of areas where he looked at the value for money that the taxpayers were getting from decisions made, whether by political actors or public service actors. There has been an ongoing discussion both federally and provincially about whether they have the explicit right for value-for-money auditing, and since the early 1980s when a former Auditor General of Canada, J.J. Macdonell, started this process, it has grown in a way that I think we would all agree has been productive, not just in Ottawa but here at Queen's Park, so I think that is becoming a reality. It certainly was in the last report that I thumbed through. For that matter, I think it would be inappropriate to have the auditor review it before the deal is signed. He

has that independence to do it after the fact and to be able to report, not just to a committee of the Legislature but to the Legislature, and the government of the day will be accountable for those decisions.

Mr Cordiano: Two points come to mind. Firstly, the auditor will not have access to documentation which will be approved by cabinet. Therefore, it would be impossible or his ability to examine this deal before it is finalized will be impeded. The intent of this amendment: Before this deal is consummated, the auditor should have an opportunity to examine the details of this deal, after you have reached a final agreement and before it is consummated by cabinet or given its blessing by cabinet, when it then becomes law.

I think that's not too much to ask, because if not, the auditor will never have the opportunity to examine those documents. They'll be sealed by cabinet and there's no way you can get at it. This is why this amendment is called for. You're mistaken when you suggest that the auditor can examine this after the fact. What he can examine after the fact are financial documents, and he can do a financial audit; he will not be able to do a value-for-money audit, which is quite different. That's the first point.

Secondly, your own minister has indicated that he intends to hire a process auditor, which would do much the same thing, so the auditor of Ontario would not be setting the framework for that audit. The process auditor you're hiring would set the framework and determine the criteria. I don't see the incompatibility between the public auditor, and your point about the auditor maintaining his independence would also be carried forward with this amendment. That would not be jeopardized in any way.

What I think we're asking for at the end of the day is a third-party oversight of this deal before it is consummated. If you can't do that, then I suggest you're leery of what might be determined and you're a little nervous about the fact that this deal will go through and someone in the form of an auditor of Ontario would examine this deal. I don't think you have anything to hide if you really believe that this deal will be transparent. If, on the other hand, you think that somehow this might be distorted, I think all of us would agree that the auditor has, without question, the integrity and the fairness that's required to examine this.

0940

Mr Hastings: Just one further comment. If this was such a brilliant idea —

Mr Cordiano: You would have thought of it. That's the attitude of the government.

The Chair: Order.

Mr Hastings: — I don't understand why Mr Cordiano didn't institute it 10 years ago when you were examining — I think they could have examined about \$3 million to \$4 million of expenditures for the proposed computer museum down at Harbourfront. It would have been a really fantastic idea to have in place then, if you were looking for a pre-audit. That's history.

Mr Cordiano: What's he talking about?

Mr Hastings: What we're talking about, maybe he recalls — the member can sharpen his memory that during the Peterson administration there was a proposal to create a museum dealing with high technology, and it was to be located down in the existing King's Landing facility on Queen's Quay. The thing came to nought. If you wanted to apply an idea that was ahead of its time, Mr Cordiano, you could have started back then.

Mr Cordiano: Why don't we bring up Bill Davis?

The Chair: Order.

Interjections.

The Chair: Order. Mr Cordiano, please.

Mr Galt: Point of order, Madam Chair: I think it's interesting that the member from the Liberal Party went to a great extent a few minutes ago to talk about people interrupting. He constantly interrupts the government side. I think maybe it's time he paid attention to his own comments and didn't interrupt every time somebody on the government side is speaking.

The Chair: Are there further questions and comments to this amendment?

Mr Pouliot: I'm the last one to caution; I'll be brief. Once the questions from the three parties, the rationale and the substance for what is in front of us has been done, may the question be put, unless there is something — the table has the capacity to say: "Yes, I have that jurisdiction. I think I've heard enough," or, "I think there is something extraordinary that will change the nature." If we're going to go to the likes of Andersen Consulting and SkyDome and so on, unless it's directly related and the analogy is filled with validity, it has no place here. I think we should try to proceed, because it doesn't bring out the best in people, myself included.

Mr Baird: I share the view of my colleague from Lake Nipigon that we should get on. I want to make two comments. One is that certainly the auditor spent a full 15 pages, which is quite extraordinary, in the 1996 report on the audit he did with respect to the Highway 407 central project, so that was clear evidence that he did have a terrific amount to look into and to report back to the Legislative Assembly and to the people of Ontario.

I am cautious, and take with a grain of salt the newfound enthusiasm for auditing by my colleagues. The member for Lawrence served as the parliamentary assistant to the Premier, who presented a surplus to the people of Ontario in September 1990, and it grew by \$3.6 billion from the day they called the election to the day the new government was put in. So if his enthusiasm for auditing was so apparent, it perhaps would have been of value for the taxpayer that he shared that with his boss at the time. I take with a grain of salt the auditing advice from my colleagues.

Mr Cordiano: Just for his edification, I was the Chair of the public accounts committee for a number of years, where I found a great deal of enthusiasm, as you put it, for what I think is important, regardless of what political party is in power — yours included, lest you think otherwise.

You're not infallible. The \$180 million you gifted to Andersen Consulting is proof positive of that. Certainly, you're not beyond the realm of making terrible mistakes, and that just indicates to everyone how terrible mistakes can be. Your government is embarrassed about that, and it ought to be. So let's not scold anyone. We try to reprimand people, and previous history — everyone makes mistakes. Just admit that you do; you're not infallible. That's why this amendment is important. That is why it's important to have a third-party, independent oversight of what will take place here, what will go forward. The office of the public auditor is independent. That's precisely why I'm advocating this.

The Chair: Further questions and comments to the amendment to section 6.1? Seeing none, I'll put the question.

Shall the amendment carry?

Mr Cordiano: I want a recorded vote.

The Chair: All those in favour?

Ayes

Cordiano, Pouliot.

The Chair: Those opposed?

Nays

Baird, Galt, Hastings, Parker.

The Chair: The motion is lost.

Any further discussion to section 6? Seeing none, shall section 6 carry?

Interjection.

The Chair: I'm sorry; I apologize. We've done section 6.

Moving, with my apologies, to section 7 — again, the amendments you have before you on page 5 and 6 are actually new to the section, so we'll deal with section 7 first.

Are there any questions and comments to section 7, as proposed in the bill? Seeing none, shall section 7 carry? All those in favour? Opposed? That section is carried.

Mr Cordiano: We have an amendment to section 7.

The Chair: Yes. These are new, though; they're additions, so we deal with them separately.

Mr Pouliot: Just after the one in the bill.

The Chair: Yes. The first one we'll deal with is a Liberal amendment. Mr Cordiano, would you please read it.

Mr Cordiano: I move that the bill be amended by adding the following section:

"Restriction on transfer

"7.1 Despite any provision in this act, a transfer of the 407 highway lands under this act is restricted to a transfer of a leasehold interest only and for a period of time not to exceed the point at which projected revenues equal the costs and liabilities relating to the Highway 407 lands, including its financing, design, construction, operation or extension."

The intent here is to set a time limit with respect to the lease provision, which has not been spelled out in Bill 70.

As I said earlier in yesterday's discussions, we believe selling this highway in perpetuity is a huge mistake for Ontario. Again, Bill 70 is silent on this matter. The minister made some indication that there would be some finite date set for this sale, that there would be a lifespan associated with the sale. I don't know what that is to be. It's not included in Bill 70. It may just be fanciful on the part of the minister to suggest that could be worked out in an agreement.

I think the public has a right to know right now what those terms are going to be with respect to the lifespan of that leasehold, and it should be done as a leasehold. The land underneath the highway is crown land. It is not being sold. I understand that. But neither should the infrastructure, the structure itself, in perpetuity. I think there is a time period, and what I've proposed here is that the time period be — and I've given you some flexibility with regard to that — the point at which capital costs are recovered. That includes some consideration for the financing costs, design, construction and operation.

All those things, for the extensions, should be included in the equation for the payback period. So if the payback period is 35 years, 39 years, 29 years, whatever that may be — again, this also relates to tolls, because if you wanted a longer payback period, you would decrease the tolls; if you wanted a shorter payback period, you would increase the tolls. Presumably, revenues would not be affected.

0950

I understand there needs to be some flexibility here in working out an arrangement with the private sector operators, but I think this section ought to be included right in Bill 70, this provision which would clearly demonstrate that there is a time limit and that it would revert back to the province, and also that at that point, once the province receives the highway back, there could be consideration of eliminating tolls altogether. Again, that's way down the road beyond probably most of our lifetimes — hopefully not, but certainly our political lifetimes. I think a future government would want that flexibility.

Mr Baird: I think on this there may be just an honest issue where reasonable people can differ. As some clarification, although it's not entirely different from what the member for Lawrence said, section 7, which we just passed, is clear: "Despite any other provision of this act, the minister for privatization may not convey title in fee simple to Highway 407 lands...." So of course it couldn't be in perpetuity, using the language that he used. It's a small difference, I'll concede.

The concern on this issue is numberfold, and I know my colleague from Lake Nipigon has another amendment dealing with this issue later. While he does talk about his amendments, he uses the word "operation." One has to wonder whether that would cover profit for any company, because a company is not going to enter into this exercise as a public service. I know the member for Lake Nipigon specifically requires that room be made for profit, which is absent in this. The member seems to concede that it does. I

suggest that perhaps it isn't as clear as it otherwise could be, pointing to the other amendment.

The concern as well is that the road really is never going to be finished in terms of the significant amount of public expenditures that are going to be taking place. Obviously the full lengths will be built over the next number of years. I would imagine you would want to put in any contract some specific commitments with respect to the time. Certainly based on what we heard, for example, from folks in Durham region, they would want to spell out a timetable when those would be done. So it's not like the highway would be built in a few months or even a year.

As well, the legislation allows, and the minister would want, I would think, to review the idea of putting expansion triggers in legislation where, as time went by, as the volume of traffic increased on the highway, you put in expansion triggers to go to six lanes and perhaps eight lanes, whether that's 10, 25 or 50 years out, which would require obviously a significant capital investment. Certainly after a time there would be significant retrofits required, as there are on all of our transportation infrastructure.

I have a concern that being explicitly clear in legislation with respect to this issue would limit the ability of the minister to try to make an arrangement that would be in the best interests of the taxpayer.

Reasonable people can disagree. I guess what you see is a reasonable difference of opinion. I have a concern where it's just cost plus profit margin. The costs are likely to be demonstrably higher, I think we would all concede, and that is a concern, and I think it tries to get away from the fundamental principle of private design, build and operation which the government is seeking to provide in the legislation.

Mr Pouliot: Chair, I need your help. I appreciate the amendment and certainly the government's critique of the proposed addition. It's brief; I'll read it.

"Despite any provision in this act, a transfer of the 407 highway lands under this act is restricted to a transfer of a leasehold interest only and for a period of time not to exceed the point at which projected revenues equal the costs and liabilities relating to the Highway 407 lands, including it's financing, design, construction, operation or extension."

I have the good fortune of getting supplementary help when I go to the bill, because this is tedious reading. It is for me; I must work hard at these things. But at least with the bill, if I'm hesitant, in doubt, I refer to the French text. I go back and forth, and sometimes I think I begin to see more clarity, especially in dealing with this. I don't have that ability, because amendments are not — but that's for another forum, another time.

I see in this amendment two things. It addresses the issue of tolls being imposed in perpetuity, and our party is pleased with that. We have a little more difficulty with our second interpretation, which is the first part of the amendment, which I believe addresses that an owner, the purchaser, can only make a profit if that amount of money surpasses, exceeds, projected revenue. What common

denominator are we going to use and so on? I have some reservations on that. I have no reservations in perpetuity of the bill; it goes to the very basis of 407.

By the way, we are biased vis-à-vis 407. It was the flagship of our administration during a very difficult period, and now you're about to sell it. So be it. We're not always right, but we simply pay a lot of attention to 407. It's very close to our doctrine of the day, if you wish.

If I can split a vote — I'm going to support the amendment anyway, but this is the way I read this and I have some difficulty with the entrepreneur once the deal has been done, has been signed, has been sealed, that you can only get a profit on an amount which is above "projected revenue."

Mr Galt: Just looking at this particular amendment, as I interpret it, it sort of ensures that the bidder would not get any profits, would be assured of all the losses. Really, after you interpret it and look at it, it would guarantee that we'd have no bidders in the end. I just don't see why anybody would bid if this amendment were in the particular bill. There's no advantage to get involved. There's a significant amount of interest out there right now, but with this amendment it would totally wipe out any private interest in taking this venture over. I, for one, would certainly be unable to support it. To me it just appears like a typical Liberal type of motion that just wouldn't function satisfactorily out there in private enterprise.

Mr Cordiano: Just to further clarify, the wording of this amendment was actually lifted from the wording that was used for the highway that was built in Nova Scotia and is operated by the private sector. It's a privatized highway, as you will recall, the first of its kind. It is in place. It was a deal that's consummated. It's working.

Just to respond to Mr Galt's point about there not being any room for the private owner to make a profit, it's certainly referred to — and I think Mr Baird alluded to this — where I say "operation." There's an expectation of profits there, that that's to be included in this formula. It just sets the framework, it does not specify what that is to be. It allows for flexibility in the negotiations that will obviously take place for a deal to be made. Therefore, there is the flexibility to do so.

However, it does put this in the context of a leasehold rather than a sale that has no limitation in time. Obviously, the formula would determine what that time period would be. It's not for me at this point, or for anyone else, to determine what that time period would be. It should relate back to the reality, and the reality is that when the highway is paid off, there's a payback period: Enough revenues have been raised to pay down those capital costs, including the operation, including the initial design, construction etc, all of those costs, and some reasonable profit, which also relates back to tolls.

That is incumbent upon your government, which is transacting this and negotiating, to ensure that tolls will not be outrageous. This at least gives you a framework within which you can work to determine that in advance and we can make accurate estimations of what the return on profit should be, a rate of return which I think you can

negotiate with any private sector operator which is reasonable. However, it does so in the act; it doesn't leave it entirely to some other kind of discretion. It gives you a guideline as to how this might be conducted.

1000

Mr Pouliot: The more I read about it, I try to fit it in, in terms of the style, the tone. There's a third party, which is very important. This is to stop or to institute — you can play it either way — escape clauses. You have a third party in the province of Nova Scotia. It's a triumvirate. That's the arrangement. You have the presence of the federal government, which is very much involved in this venture. You also have, obviously, the province. This has a Doug Young style of operation written in, and I say this with respect. I have known him for close to 30 years. I know him very well. It need not apply here.

I have increased difficulty. You see, fight, fight, fight, if you're against; once the deal is consummated, I turn to the consumer and say, what about the ability in perpetuity for the tolls, which is contrary to us? But I don't have the ability to fix the revenue and I don't believe anybody else has, only the profit exceeding that revenue. I'm afraid if that's the case, you will get lowballed in the offer to purchase. I know you need the money to balance the books, and that's not altogether unfair. The thing is, you will get lowballed on the front end. There's no secret here. It all comes out in the wash. If the profit margin is very thin, there will be contingencies which will be larger than the contract.

We've dealt with the Bombardiers and AEG Westinghouses and the Daimlers of this world, and I can assure you that it's enough to scare a contingency of the finest advocate emanating from Philadelphia or from U of T. So I will most reluctantly not be supporting this amendment because of the first portion.

Mr Baird: I just have a quick question for my colleague from Lawrence. Going back to the issue of profit, the member for Lake Nipigon has specifically allowed for that, so obviously he felt that financing, design, construction, operation and extension also are required to be explicit on profits. I accept that there could certainly be an argument that "operation" could include profit. Before someone puts down \$1 billion to buy a road, they may want a little bit more certainty on it.

But just to help me a bit, what would be one example of how you would build in profit margins, if we accepted this amendment? Give me one example.

Mr Cordiano: Rate of return.

Mr Baird: It would be a fixed rate.

Mr Cordiano: It would be a percentage, a rate of return. That's how any deal is consummated in the private sector. When you look at these deals, you look at what's your rate of return, what can I reasonably expect.

Mr Baird: I'm not being political, I'm being very genuine. Would that not just make it cost plus profit margin?

Mr Cordiano: You're thinking construction costs plus profit.

Mr Baird: Construction costs plus operational costs plus profit margin.

Mr Cordiano: This thing is built already, and apart from the extensions, it's operational. You already have a stream of revenue, which is quite different. We're not talking about a construction contract here; we're talking about a going concern. You can determine what that is from the revenues already. You have cash flow. You can determine from the cash flow what this thing is worth. Then I'm allowing for flexibility, because you're able to deal with the parameters of this in the negotiations themselves. It gives you that flexibility.

Mr Baird: But you've got the financing and a better idea of the operation costs for 407 central, and those are not insignificant financing costs. You've also got the obligations on the east and the west corridors to extend them.

Mr Cordiano: That has nothing to do with this.

Mr Baird: The concern I have, though, is, if it's just become cost, your operational or your construction or financing costs, plus a profit margin —

Mr Cordiano: No. It's just the revenue side. It's got nothing to do — the private sector operator will have to go out and finance the construction costs, that is their baby, so to put it. It's not included in this.

Mr Baird: So we would pay for that.

Mr Cordiano: You're including them as part of a long-term picture, but now you have cash flow in which to determine what this thing is worth. The extension would obviously add to the cash flow.

Mr Baird: For example, the day that the entire thing is completed from east to west and it's all in place, there would be your financing costs and then your operating costs, plus a profit.

Mr Cordiano: First of all, the private sector operator has to go out and borrow some money to buy this to pay you, unless they have cash, and I don't think they've got that. They're going to go out to the capital markets and finance this. So they're going to make their estimations based on what it costs them to finance. As my esteemed colleague from the NDP has been arguing, the government can do that more cheaply. That's never going to be argued by me, because that is a fact. However, having said that, the firm that buys this will go out and try to build this as cheaply as possible and do it much more efficiently than government would, which is why you're moving in this direction. All of those will be cost considerations in this formula. You're going to have to do this anyway. I'm just trying to write it into Bill 70. The process of determining what this thing is worth and what you should sell it for is a valuation method. This is a valuation method in general terms, but it's not in detail.

Mr Baird: I am trying to follow it, but it would essentially mean, going back to what you said earlier, a guaranteed rate of return. Does that not go back to the issue of risk, that if traffic volumes come down, tolls would have to go up or there has to be some subsidy of some sort?

Mr Cordiano: Wait a minute. We're not limiting what they can charge on tolls here. As an operator, they can still regulate and change what that level is. They can charge whatever they want on tolls.

Mr Baird: If they get a guaranteed rate of return, which is what I believe you're arguing, if I'm right, and the traffic volumes were to go down due to a recession or what have you, then tolls, in the absence of a subsidy, would have to go up in order to allow the financing charges to be made before the rate of return.

Mr Cordiano: No. The effect of this is to limit the time period. It puts a finite limit on the number of years that you're transferring this leasehold over.

Mr Baird: I agree with you.

Mr Cordiano: When they make their estimation on rate of return, it's for you to determine what that time period should be. You're not setting a rate of return. If it happens to be higher because they're hugely successful, then that's profit to the operator.

Mr Baird: What if it's lower?

Mr Cordiano: That's your risk. I'm trying to limit your risk, and the consumer, ultimately, in terms of tolls and what those will cost. If you have a finite number of years, this reverts back to the province. At that point, presumably, that government would lift the tolls on the road. That's what I'm after here.

Mr Pouliot: I don't know. It's time for me to move on. I've appreciated that. It's been 14 years. Sometimes I think I know why better than other times. Under the influence of a milieu, I guess I still am, a number of years. Don't ask me what I'm doing with the NDP. I'm comfortable there too.

The higher the reward, the higher the risk. If we say the government was the risk-taker and now other people will be the risk-taker, you can bookend the perimeters, and this will be reflected in your criteria when you call for your requests for proposal.

It will be big enough that you will achieve economies of scale. Likely, two or three consortiums will be formed, or four consortiums. They will be a group of majors and some medium, mid-cap companies, all with some related expertise, and every one of those, hopefully, will be encouraged to bid on the design, construction, operation and maintenance of the project. They might throw the engineering in for free, because they get a bigger piece of the pie. That's where you will enact some savings.

There is no secret here. If you control one side of the operation, aside from standards — I think most people agree that standards should be done at arm's length or by an independent body, because it's the safety of all of us, of all motorists, and that should not be, with respect, solely the responsibility of an entrepreneur. MTO has very good standards, there are reasons to liaise and so on, but in the final analysis, government has to have the rein on safety, because they do so throughout the province and it would be inconsistent not to do so for any future development. That's not in the quarrel.

1010

It's all linked. You have competition here. You have the 401, thank heaven. Competition in the marketplace is the essence of what is being done here, it's the essence of the system. Once you remove that, it's an invitation to monopoly and cartel. No one wishes that.

Maybe later on you will wish to reflect, because it's a massive project, to split the project. Then you would minimize risk, but that's another philosophy. Rather than give another 70-some-odd kilometres, because you're looking at \$2 billion with the toll equipment, you might wish to say, "Well, let's see how the first one goes," because you have a timetable attached to it anyway. They won't be able to deliver any faster, and you may wish to split the project. It's also fairly good politics in terms of having those consortiums. If you lose a \$1-billion contract, you don't swallow that easily. Then dim the lights, they scare one another and they come after you. Every little line is scrutinized 10 times over again. But that's the exposure you give yourself when you're in government. We went through it. It's not a problem usually.

I cannot see how the limitation of an entrepreneur will not impact on the bidding of the overall process, because you cannot take a molecule, an atom, and move it out of the convention and isolate it and then put it back in; it is a whole piece that they will be bidding on. I heard "cost plus." Nothing scares me more than cost-plus factors. We all have oratory. I did SkyDome for the opposition. I'd never want to go through that again. One day, with good, premium, single-malt scotch we can talk about SkyDome. I don't want to go into the cost-plus factor any more.

I have some difficulty, Joseph, with limiting the profits. I have no difficulties with seeing finality to charging the motorists.

Mr Cordiano: You're not limiting profits; you're limiting the time period.

Mr Pouliot: We're talking about a different thing here.

The Chair: Further questions and comments? Time for decisions. All right, then. Shall this amendment carry? I put the question. All those in favour?

Mr Cordiano: Can we have a recorded vote, please?

Ayes

Cordiano.

Nays

Baird, Chudleigh, Hastings, Pouliot.

The Chair: That amendment is lost.

We have another amendment to section 7. This is an NDP motion. Mr Pouliot, please read it.

Mr Pouliot: I move that the bill be amended by adding the following section:

"Limitation on transfer

"7.1 Despite any provision in this act, the minister for privatization shall not enter into an agreement for the sale of Highway 407 lands and of assets comprising or related to Highway 407 unless,

"(a) at least 90 days before the sale is concluded, the minister tables in the assembly all reports commissioned by the government relating to the privatization of Highway 407; and

"(b) the reports demonstrate that it is likely that the total cost of managing Highway 407 will be less under private ownership than under public ownership."

If I may speak to the motion, simply put, our motion asks for the tabling of the privatization document that was commissioned by the taxpayers of Ontario under the auspices of this government. We feel it is imperative that, notwithstanding our understanding of commercial confidentiality, since we paid for it, we see what the privatization document says. That's why we're moving the resolution. We say 90 days to digest the process is not a long time. People have been waiting so long for the extension.

Then in terms of the management of the highways, I go back to what my colleague and friend Mr Cordiano has said about how you get the best bang for your dollars. Prove to me that it can be done cheaper by the private sector. It's not always the case. We've just uncovered the horror show of one — well, reputable in some circles, I guess — Andersen company, where the cost per hour was something that I for one, being of moderate means, can never relate to, costs like \$575 per hour in some cases for work that could have been done for half the price. So, again, our much-maligned civil service, who achieve continuity, and they're the essence of our system, without them you couldn't even cross the street as a politician.

We're not political pundits. Most of us shake hands with people and hope they feel good about themselves. That's about the extent of it, and then we help them with their sore backs and the small things. That's our human dimension, our world. Let's make sure that it can be done more cheaply with the private sector, because for those people there are several motivations; one is hunger, one is profit. God bless the President. Civil servants are not profit-motivated. So, what we're saying is, "Prove it to us." That's what the amendment is saying. It's very simple. We feel it's commonsensical, that it should be readily accepted, acquiesced to by the government; we know it will.

Mr Hastings: Thank you, Mr Pouliot, for your comments on this proposal. You're always accusing us of not listening. That seems to have been a constant theme around here for three and a half years. I think this particular example would suggest that the proponent wasn't listening to our deputants over the last day, because I think at least four of them, maybe five, said that it's time to get on with the job and to create some construction jobs, get going on the west end of this marvellous project and get moving on the east end of this project. Why? For several reasons, primarily two: first, the traffic paralysis that is mounting even on the existing configuration; and second, I think at least two of our deputants spoke of the loss of productivity in this province in terms of jobs in a number of sectors, auto parts, trucking, food processing, a lot of areas throughout the GTA that need this particular project completed in order to maximize investment and particularly to increase productivity, because if we're going to have the dollars we need for all the social safety programs that are in place, we have to maximize our wealth opportunities here.

This strip of highway is one of the modest keys to achieving that increased productivity, because all you have to do today is examine some of the literature that

shows pretty clearly that this country is starting to lag behind in productivity, for a whole set of complex reasons. If we don't start making some efforts and initiatives at changing that particular context, we're going to be in deeper trouble than we're already in, because of the G7 countries, we're probably on the low end of productivity. If it weren't for Ontario, Alberta and Quebec to a certain extent now, this country would be even further behind the productivity ball.

I find the proponent's request in this amendment for a 90-day delay simply unconscionable. We've had more than 10 years of delay. This thing probably should have been completed many years ago. At least all the sections but the east side of this project should have probably been in place long before now. I think one of the deputants said that the planning for this particular project started 20 years ago. It's time to get on with the job. Another 90-day delay certainly doesn't help us in the broader context of the themes I've brought up today. We need to defeat this particular amendment.

1020

Mr Baird: I certainly appreciate the comments made by my colleague the member for Etobicoke-Rexdale in terms of the tremendous loss of productivity for the economy of the greater Toronto area. But where I would disagree with him is that it's not just the greater Toronto area; it's also eastern Ontario and western Ontario, who have to go through the area. This affects folks in my part of the province as well, albeit not as significantly as folks in his constituency. So he's not just right, but more right than he knows.

I appreciate the spirit in which my colleague has offered this amendment. I think it is problematic to negotiate financial transactions that are almost certainly going to go into the 10-digit area in terms of the costs and the obligations. Together, they will certainly go into the 10-digit area. It's problematic to conduct such large and sensitive negotiations in the public domain, as I know he would appreciate.

In addition, with respect to clause 7.1(b) of his amendment, it's again problematic to quantify the total cost of managing the highway when we're talking about a long-term lease arrangement. Obviously a big part of the solution can be touched on in the legislation, but indeed you would think a potential contract would deal with issues including the traffic volume and the obligations to expand the number of lanes and the operation costs depending on the volume itself. It's problematic to know that ahead of time, to be able to accomplish what he hopes to accomplish with his amendment.

Mr Cordiano: I probably will support this amendment, but because I'm reading the following amendment, dealing with costs etc, what I think we're after here is ensuring not only that the taxpayer gets good value for money in terms of the sale but also some consumer protection, the ultimate users of the highway.

I don't think it's too much to ask for 90 days; 90 days is not an unreasonable time period. Mr Hastings suggested that we're falling behind in productivity, that this should

have been built many years ago. Well, it could have been built. You could have started this process even in the first year of your mandate. If it was such a priority for this government, then they could have started that three years ago, right at the very beginning. I don't see why it took you three and a half years to deal with this. I think some of your supporters would ask that same question. Here is this government that professes to work with the private sector, and yet this is the first deal they've ever done, three and a half years later.

Mr Baird: Moving too slow.

Mr Cordiano: You moved fast on things you shouldn't have moved fast on, and on something like this, where you should have moved quickly, perhaps there would have been every intention to move ahead with those extensions, but you never lived up to that promise. I don't think this is an unreasonable amendment, and I'll be supporting it.

Mr Pouliot: I hear you in terms of the 90 days, but the 90 days I have to take with a grain of salt. You portray it as if the sky is about to fall or it's catalytic, it's a make-or-break point. It is really not. You've showed your intent. The 90 days will not kill the project.

What we're saying — and we don't wish to get involved, Mr Baird, not at all — is that we want it to be tabled before you go ahead, because it will establish some criteria. Once you enter negotiations, we wouldn't even dream of having a cup of coffee with the people who are involved. It is not our role. Then, of course, we should respect commercial confidentiality, but what we're seeing is that you commissioned a review, with great trumpet and fanfare, at taxpayers' expense. The taxpayers come calling again and they are saying: "We have a reciprocal agreement. We want to see what's in it." There's nothing talking about any individual company. There is no deal that will ever be jeopardized. We're not there yet.

We're saying, before you go to your request for a proposal — although I read the paper, I was at the airport the other day and someone had left behind a copy of the Financial Post. It was the only paper there, so I picked up the Financial Post.

Mr Hastings: No.

Mr Pouliot: Yes. I picked up the Financial Post and, my God, what do I see? A request for a proposal. So I said, "When I go back to Queen's Park, I must make sure that there is an amendment." I was surprised. In Manitowadge, if I pick up a paper, it says, "Vietnam War Over," or "Pearl Harbour Bombed," but this was a daily newspaper right there, and no less than — who owns the Financial Post?

Mr Baird: Your friend Diane Francis.

Mr Pouliot: No, Diane Francis is only a contributing editor.

Mr Hastings: Jim Bradley.

Mr Pouliot: I don't see why people of good conscience in our parliamentary system — I know you wish to be adversarial, but you're not going to jeopardize the government. You have 82 members. This is not going to delay the project. Ninety days is — we heard what you said. We weren't wrong. For some it's very difficult to admit any wrongdoing. Why don't you vote for this? I'm at a loss.

I'm your friend. We chat in the House, we exchange confidential views at committee. Sure, we don't tread the same circles once we're out of here. I don't belong to any clubs and I don't drive the same vehicle as you do, probably —

Mr Hastings: Don't you belong to the Manitowadge curling club?

Mr Pouliot: No, sir. The rod and gun club I do, though.

This is the final plea. I'm starting to lose a bit of confidence. I was so sure when I got up this morning that this was going to pass. I would have bet anything that this was going to pass.

The Chair: Any other questions or comments? OK, I'll ask the question. Shall this amendment carry?

Mr Pouliot: A recorded vote.

Ayes

Cordiano, Pouliot.

Nays

Baird, Chudleigh, Galt, Hastings.

The Chair: This amendment is lost.

Moving on to sections 8, 9, 10, 11 and 12, there are no amendments proposed to those sections. Are there any questions or comments on those five sections? Seeing none, shall sections 8 through 12, inclusive, carry? All those in favour? Opposed? Those sections carry.

Moving now to section 13, we have a government amendment proposed that's found on page 7.

Mr Baird: I move that section 13 of the bill be struck out and the following substituted:

"Person responsible for payment of toll

"13(1) A toll and any related fee and interest payable under this act for the operation of a vehicle on Highway 407 shall be paid to the owner by,

"(a) if a toll device is not affixed to the vehicle, the person in whose name the plate portion of the vehicle permit is issued;

"(b) if a toll device is affixed to the vehicle, the person to whom the toll device is registered.

"Evidence

"(2) Photographic or electronic evidence of the use of Highway 407 is proof in the absence of evidence to the contrary of the obligation to pay a toll.

"Application

"(3) Sections 16 to 16.9 apply to the enforcement and collection of tolls and related fees and interest payable under this act by a person described in subsection (1) but do not apply to the enforcement and collection of such tolls, fees and interest if,

"(a) the person is responsible for the payment of such tolls, fees and interest under clause 13(1)(b); and

"(b) the toll device that was affixed to the vehicle in question was obtained without providing information identifying the plate portion of a vehicle permit."

Perhaps it would be quicker to speak to (1), (2) and (3) separately.

Subsection (1) just clarifies the liability to pay. For example, if someone were to lend me their toll device, the person whose name the toll device is in is responsible for paying. That just seeks to clarify that issue.

Subsection (2) in this amendment is from subsection 16(22) of the bill. We just moved it for clarity.

On the third issue, subsection (3) deals with enforcement and further amendments with respect to — sometimes the licence plate is not taken so there's no plate denial available. For example, someone could walk in and give a cash advance for a transponder, or a credit card or something else, and not tie it to their licence plate but to other means.

1030

Mr Pouliot: Briefly, I take the first part as mostly technical, as in many of the amendments. That's OK. Then I go on to "evidence," and I want to draw your attention to the last paragraph, "(b) the toll device that was affixed to the vehicle in question was obtained without providing information identifying the plate portion of a vehicle permit."

I read under "application," "Sections 16 to 16.9." I guess we'll have to wait. My question is, what happens then? You say, for instance:

"(3) Sections 16 to 16.9 apply to the enforcement and collection of tolls and related fees and interest payable under this act by a person described in subsection (1) but do not apply to the enforcement and collection of such tolls, fees and interest if,

"(a) the person is responsible for the payment of such tolls, fees and interest under clause 13(1)(b); and

"(b) the toll device that was affixed to the vehicle in question was obtained without providing information identifying the plate portion of a vehicle permit."

One would assume that they regularly would have to go back to the act and say, "This is what you do."

Mr Baird: For example, if I chose to get a toll device and didn't want to register it to my licence plate, I could perhaps give a credit card. That would allow me to take the toll device and use it. If I were someone of different means and had more than one car, for example, or a family had one toll device that they wanted to share among them, it wouldn't necessarily have to be tied to someone's licence plate; it could rather be tied to a person, if they chose to provide means of payment, whether it was by automatic bank debit, by credit card or other means.

Mr Pouliot: I like that. Thank you.

The Chair: Further questions or comments? Seeing none, shall this amendment carry? All those in favour? All those opposed? This amendment carries.

The next amendment before you is to this section but it's a new amendment, so we're going to deal with section 13, as amended. Further questions or comments on section 13 as a whole? Seeing none, shall section 13, as amended, carry? All those in favour? Opposed? It carries.

We now have an NDP amendment that will be new, added to section 13.

Mr Pouliot: I move that the bill be amended by adding the following section:

"When tolls cease

"13.1(1) Despite any other provision in this act, the owner shall not impose or collect a toll with respect to the operation of a vehicle on Highway 407 after the owner has recovered the costs referred to in subsection (2) and such additional amount as may be prescribed by regulation as the owner's profit margin.

"Costs

"(2) The costs referred to in subsection (1) shall include all costs and liabilities relating to the Highway 407, including the costs relating to its management, construction and operation and to any improvement, replacement, alteration or extension of the highway.

"Regulation

"(3) A regulation prescribing the amount of the owner's profit margin shall only be made if, at least 60 days before the regulation is made, the proposed amount is published in a newspaper of general circulation in the province."

We have the cost factor again. We strongly believe that we must not interfere, but having said that, we just as strongly believe that the profit margin should be published pertinent to Highway 407. If we read carefully, we don't want — and I'm not imputing motive in the least. Some of you are used to reading prospectuses and financial reports. They're supposed to make things easier, but sometimes you need an excellent advocate just to decipher. It's quite difficult. It's not easily digested. What we're saying is, don't take the overall picture; just give us a profit margin specifically on Highway 407. What you do is publish it aside from your quarterly or annual reports. We want it to show independently. That's what our proposal says.

Mr Baird: I think my colleague's amendment deals with two issues. I didn't spend a considerable amount of time looking at the second issue because I had a concern with the first. A very, very wise man once said, "Nothing scares me more than cost plus" — M. Pouliot, 1005 today. I think with respect to the last four words in his proposed amendment, 13.1(1), that scares me enough to back off.

Mr Pouliot: No, no. When you read this, I don't blame you. If it comes from the New Democratic Party, it must be so far —

Mr Baird: You're inciting fear in your comments. You're a merchant of fear.

Mr Pouliot: I'm trying hard, just in case we're on camera one day in the Amethyst Room, to keep a straight face on this one. All we're saying is — OK, you caught me — you're not listening to us when it comes to ending the tolls. If there is one item, one catalyst for us, it's the tolls in perpetuity. We have the commitment at present. You see, we evolve away from the premise that you extend the 407 as quickly and as long as possible but do it with the present format.

Ideologically, with the mindset that you have — that doesn't mean you're wrong — philosophically we are opposites. We are aware that the cost factor — you're looking at \$20 million per year, just cost-related, until the

year 2025 or 2030. Well, you'll make it longer. You watch them borrow over a 35-year period so that it's going to cost them less per year. The thing is, \$20 million need not apply. It's the cost of borrowing that's the killer right at the beginning, and, added to that, the need to make a profit. So what we're saying is, be reciprocal. We're not talking about cost plus here in terms of the project; we're talking about the recuperation of money. At one time, you have to start looking and saying, "OK, this thing has paid for itself eight times over."

They're going to use your highway as collateral. There's nothing wrong with that. They're going to market the technology all over the world. Again, there's nothing wrong with that. What we're saying is that you have to protect the motorists a little bit at one time.

Under our provision, it goes back to the province after 30 years. The thing is oversubscribed, by estimates, making more money. All the capital corporation, which is the facilitator, does is collect money. They borrow and collect money. If they wanted to, it would be able to pay faster than anticipated. Hopefully your private sector will have the same success story, but what I'm saying is that when you're profit-motivated — and there's nothing wrong with that — expect that you must make a profit. The shareholders own you. That's OK. Also, expect that the cost of borrowing — go to Merrill and float an issue of Ontario bonds. You've got less than 20 basis points between Ontario and Ontario Hydro. With the mess Ontario Hydro is in, how much do you think it would cost Ontario Hydro, as a private entity, to float a debenture?

Mr Baird: Without the 50-basis-point charges the Ministry of Finance instituted under your government, I suggest probably fairly approximate.

Mr Pouliot: No, no, the costs are there. It's not only our government, it's every government.

1040

Mr Baird: I'd suggest it's fairly approximate with the 50-basis-point levy that the NDP government put on Ontario Hydro bonds.

Mr Pouliot: They're a basket case; they've got \$20 billion of unfunded liabilities.

Mr Baird: I'm saying in terms of Ontario Hydro debt versus province of Ontario debt, Hydro is actually a little bit cheaper because of the 50-basis-points add-on that we put on.

Mr Pouliot: I don't want to argue. I'll give you one Pickering; buy one Pickering for a buck and you get one free. They're \$32 billion in debt. The assets are worth not even half of that. You know that and I know that and that's been established by all accountants. But they still command a commendable rate with the marketplace because if they don't pay the coupons, the government will pay the coupons. It's as simple as that. I'm sorry, but that's the way it is.

Interjection.

Mr Pouliot: You're saying that the tolls will stay here forever. There is nothing in this bill that says otherwise, so get used to it.

Mr Baird: Section 7.

Mr Cordiano: I understand what my esteemed colleague is attempting to do and that is to limit the time period for tolls. I suppose that's what you're after here, but I don't see how this accomplishes that. I'm trying to understand this. I appreciate what is being sought here, but you really do have to put a time limit on the sale. Therefore, my amendment dealing with leasehold is the only way to accomplish that. At some point tolls come off and that point is the point at which the highway is paid for, and along the way there's been a reasonable profit for the operator. That's simply a formula that's worked out to determine that.

With respect to this, you're contemplating what happens once that point is reached that the initial capital costs of the highway are paid for. After that, you want tolls to be lifted. Quite frankly, what happens after that is up for discussion. It may be 39 years down the road, it may be 29 years down the road, it may be more than that. I think it's far more important to put a time limit on this now in the act rather than trying to contemplate when tolls are lifted. I cannot foresee that; that's too far forward into the future.

I think it would also shackle the operator at some point, trying to limit the profit margin. I think you would want unfettered ability on the part of the operator to have a reasonable profit based on the marketplace. But in order to establish that, it would be reasonable to limit the time frame in terms of when tolls can be collected and should be collected, relating back to capital costs, which is originally what you did anyway. The deal that you have now is 29 years, I believe, and tolls would come off after that time period. That relates back to the question of capital costs. So I don't think I'm going to support this amendment.

The Chair: Further comments? Seeing none, I put the question. Shall this amendment carry? All those in favour? Opposed? This amendment is lost.

We move now to section 14. A government amendment is proposed to that.

Mr Baird: I move that clause 14(1)(e) of the bill be amended by striking out "registration, distribution and validation" in the second line and substituting "registration and distribution".

To explain, as per the amendment we made to subsection 1(1) of the bill, where we struck the word "validation," this is just a corresponding amendment.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

We have another government amendment to section 14.

Mr Baird: I move that section 14 of the bill be amended by adding the following subsection:

"Validation of toll devices

"(3.1) For the purposes of subsection 191.2(2) of the Highway Traffic Act, a toll device is a validated toll device under this act if a toll device agreement is in effect with the owner with respect to that toll device."

Just as an explanatory comment, this is obviously following up on the last amendment and the one to sub-

section 1(1), that any toll device agreement that's in effect is obviously a self-evident validated toll device.

The Chair: Further discussion? Seeing none, shall this amendment carry? All those in favour? Opposed? This amendment carries.

Another government amendment to section 14, found on page 11.

Mr Baird: I move that section 14 of the bill be amended by adding the following subsections:

"Transitional, collection of tolls

"(5) If, before the day this section comes into force" —

Mr Pouliot: On a point of order, Chair: My apologies. It's a transitional measure and it's minor. I would ask that we dispense and deem it read into the record. It's fairly lengthy.

The Chair: I'm sorry, it has to be read into the record.

Mr Baird: I appreciate the spirit in which the member's comments were made. I'll start over again.

I move that section 14 of the bill be amended by adding the following subsections:

"Transitional, collection of tolls

"(5) If, before the day this section comes into force, a vehicle was driven on Highway 407 and, as of that day, no invoice or statement has been sent with respect to payment of a toll for the use of Highway 407, the owner shall collect and enforce payment of the toll as though the vehicle had been driven on Highway 407 after the day this section comes into force.

"Same

"(6) If, before the day this section comes into force, a vehicle was driven on Highway 407 and an invoice or statement was sent with respect to payment of a toll for the use of Highway 407 and, as of that day, the toll has not been paid, then, despite anything in this Act,

"(a) the crown in right of Ontario may collect and enforce payment of the toll in accordance with section 43 of the Capital Investment Plan Act, 1993; or

"(b) if the owner and the minister for privatization enter into an agreement to that effect, the owner may collect and enforce payment of the toll in accordance with section 43 of the Capital Investment Plan Act, 1993."

As the member for Lac Nipigon said, this is a transitional issue. It just deals with tolls that would be outstanding and are accounts receivable and invoices outstanding would be accounts receivable, and that would be up to the negotiation between the two prospective parties on who would get the benefit of that. Obviously, no one would get it for free and that would be involved in the accounting of any financial arrangement.

The Chair: Further questions or comments? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Any further discussion of section 14? Shall section 14, as amended, carry? All those in favour? Opposed? Section 14 carries.

Section 15: also a government amendment proposed.

Mr Baird: I move that section 15 of the bill be struck out and the following substituted:

"When payment due

"15(1) Subject to any agreement between the owner and a person responsible for the payment of a toll, a toll or fee is payable on the day an invoice for it is mailed, delivered by hand or sent by any other prescribed method to that person.

"Interest

"(2) Subject to any agreement between the owner and a person responsible for the payment of a toll, interest on a toll or fee begins to accrue and is payable 35 days after the invoice for the toll or fee is mailed, delivered by hand or sent by any other prescribed method to that person.

"Cause of action

"(3) A toll and any related fee or interest is a debt owing to the owner and the owner has a cause of action enforceable in any court of competent jurisdiction for the payment of that debt but the debt may not be enforced while the obligation to pay a toll or fee is being disputed under section 16.1 or is subject to an appeal under section 16.3."

1050

The issues raised in this amendment were touched on by the Canadian Council for Public-Private Partnerships yesterday and provide a greater degree of flexibility. I would draw members' attention in the proposed amendment to subsection 15(1), to the last four words, "prescribed method to that person." We're trying to get away from saying "mailed or delivered by hand." For example, invoices could be sent more readily by e-mail in the future. I know I've received the odd invoice by e-mail already and that's something that's likely to continue. It just provides a greater degree of flexibility. Also, it would deal with issues like prepaid accounts and automatic credit card payments.

The Chair: Further discussion or comment? Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion on section 15? Shall section 15, as amended, carry? All those in favour? Opposed? Section 15 carries.

Section 16: A government amendment is proposed, found on page 13.

Mr Baird: I move that section 16 of the bill be struck out and the following substituted:

"Failure to pay toll

"16(1) If a toll charged for operating a vehicle on Highway 407 or any administrative fee is not paid within 35 days after the day it is payable under subsection 15(1), the owner may send the person responsible for the payment of the toll a notice of failure to pay the toll.

"Content of notice

"(2) The notice shall,

"(a) set out the amount of the toll, of any administrative fee and the interest rate that is being charged;

"(b) inform the person named in the notice that he or she may dispute the matter on a ground referred to in subsection 16.1(1);

"(c) inform the person named in the notice that if he or she disputes the matter,

“(i) he or she must send a notice of dispute to the owner within the time period referred to in subsection 16.1(2),

“(ii) he or she bears the onus of proving the grounds on which the matter is disputed, and

“(iii) the tolls, fees and interest set out in the notice shall be deemed to be paid in full if the owner fails to send the person its decision within 30 days of receiving the person’s notice of dispute; and

“(d) inform the person named in the notice that if the toll or fee referred to in the notice, or any interest on that toll or fee, is not paid within 90 days of the day on which the person received the notice, the registrar of motor vehicles may refuse to validate the person’s vehicle permit or refuse to issue a vehicle permit to the person and that the registrar of motor vehicles may do so even if the failure to pay is disputed under section 16.1.

“Dispute

“16.1 (1) A person who receives notice under section 16 may dispute the alleged failure to pay a toll on any of the following grounds:

“1. The toll was paid in full.

“2. The amount of the toll is incorrect.

“3. The vehicle, the numbered plate or the toll device registered to the person was lost or stolen at the time the toll was incurred.

“4. The person is not the person responsible for the payment of the toll under subsection 13(1).

“Notice of dispute

“(2) A person who receives notice under section 16 may dispute the alleged failure to pay a toll if the person sends a notice of dispute, setting out the grounds on which the dispute is based, to the owner within 30 days of receiving the notice of failure to pay the toll under section 16.

“Payment without prejudice

“(3) The payment of a toll and related fees and interest shall not prejudice the right of a person who receives notice under section 16 to dispute the alleged failure to pay the toll, fees and interest.

“Onus

“(4) The onus of proving the grounds upon which a dispute under this section is based is on the person who sends notice of the dispute.

“Decision

“(5) Within 30 days of receiving a notice of dispute from a person under subsection (2), the owner shall render a decision and shall send the person a copy of the decision, with or without reasons.

“Same

“(6) If the dispute is unsuccessful, the owner shall, in writing together with the copy of the decision, inform the person who gave the notice of dispute of his or her right to appeal the decision to a dispute arbitrator and shall provide the address of the dispute arbitrator.

“Failure to give timely decision

“(7) If the owner fails to send a copy of the decision to the person who sent the notice of dispute within the time period required under subsection (5), the tolls and the

related fees and interest that were the subject of the dispute shall be deemed to be paid in full.

“Appointment of dispute arbitrator

“16.2(1) The Lieutenant Governor in Council may appoint a dispute arbitrator for the purposes of section 16.3.

“Fees and expenses

“(2) The fees and expenses of the dispute arbitrator shall be paid by the owner.

“Appeal

“16.3(1) A person may appeal the owner’s decision under section 16.1 on any of the grounds referred to in subsection 16.1(1) if the person sends a notice of appeal, setting out the grounds of the appeal, to the dispute arbitrator and to the owner within 30 days of receiving a copy of the owner’s decision under subsection 16.1(5).

“Submission by owner

“(2) Within 15 days of receipt of a notice of appeal under subsection (1), the owner may send a written submission to the dispute arbitrator.

“Copy to appellant

“(3) Upon making a submission under subsection (2), the owner shall send a copy of the submission to the appellant.

“Appeal process

“(4) The dispute arbitrator shall review the notice of appeal and any submission made by the owner under subsection (2) and may,

“(a) decide the matter on the basis of the written material;

“(b) if he or she thinks it appropriate, hold a hearing into the matter; or

“(c) use any available mediation or alternative dispute resolution method that he or she considers appropriate.

“Appeal decision

“(5) The dispute arbitrator shall decide the appeal solely on the grounds referred to in subsection 16.1(1).

“Order for expenses

“(6) If the dispute arbitrator finds that the appellant is not responsible for payment of the toll he or she may order the owner to pay the appellant the amount of his or her reasonable out of pocket expenses incurred in connection with the dispute or appeal of the dispute.

“Decision final

“(7) The decision of the dispute arbitrator is final and binding and is not subject to appeal.

“Notice of decision

“(8) The dispute arbitrator shall send the appellant, the owner and the registrar of motor vehicles a copy of his or her decision within 120 days of receiving the notice of appeal under subsection (1).

“Failure to give timely decision

“(9) If the dispute arbitrator fails to send a copy of his or her decision within the time period set out in subsection (8), the appellant or the owner may apply to a court of competent jurisdiction for an order compelling the dispute arbitrator to give his or her decision.

“Repayment of paid tolls

“16.4(1) Where a person who receives notice of failure to pay a toll under section 16 pays the toll and the related

fees and interest, in whole or in part, the owner shall return the amount paid to the person, together with interest, if,

"(a) the owner or the dispute arbitrator subsequently decides that the person is not responsible for the payment of the toll, fees and interest; or

"(b) the tolls, fees and interest are deemed to be paid in full under subsection 16.1(7).

"Interest rate

"(2) The interest on an amount returned under subsection (1) shall be charged at the same rate as the rate established by the owner under clause 14(1)(c).

"Interest on unpaid tolls

"16.5 Interest on unpaid tolls and fees continues to accrue even if a person disputes or appeals the obligation to pay a toll.

"Registrar notified of failure to pay toll

"16.6(1) If a toll, and the related fees and interest, are not paid within 90 days of the day a person receives a notice of failure to pay under section 16, the owner may notify the registrar of motor vehicles of the failure to pay.

"Method of giving notice

"(2) Any notice to the registrar of motor vehicles under this section may be given in writing, by direct electronic transmission or by any other prescribed method.

"Notification

"(3) The owner shall promptly inform the person who received notice of failure to pay under section 16 that notice has been given to the registrar of motor vehicles under subsection (1).

"Registrar's action

"(4) If the registrar of motor vehicles receives notice under subsection (1), he or she shall, at the next opportunity, refuse to validate the vehicle permit issued to the person who received the notice of failure to pay under section 16 and refuse to issue a vehicle permit to that person.

"Same, if dispute

"(5) The registrar of motor vehicles may act under subsection (4) even though the person who received the notice of failure to pay under section 16 has disputed his or her obligation to pay under section 16.1 or has appealed a decision of the owner under section 16.3.

"When toll is paid

"(6) If notice has been given to the registrar of motor vehicles under subsection (1) and the toll and related fees and interest are subsequently paid, the owner shall immediately notify the registrar of the payment.

"Same

"(7) If the registrar of motor vehicles is notified by the owner that the toll, fees and interest have been paid or is notified by the dispute arbitrator that the person is not responsible for paying the toll, fees and interest, the registrar shall,

"(a) validate any vehicle permit that he or she refused to validate under subsection (4);

"(b) issue a vehicle permit to a person if it was refused under subsection (4).

"Statutory Powers Procedure Act

"16.7 The Statutory Powers Procedure Act does not apply to the owner's or a dispute arbitrator's powers of decision under section 16.1 or 16.3.

1100

"Documents

"16.8 (1) Any document or notification required or permitted to be sent under section 16, 16.1, 16.3 or 16.6 shall be sent by registered mail or delivered by a bonded courier, or sent by any other prescribed method.

"Deemed receipt

"(4) A document referred to in subsection (1) shall be deemed to have been received,

"(a) if sent by registered mail, on the fifth business day after the day it was mailed; or

"(b) if sent by a prescribed method, on a prescribed day.

"Business day

"(3) For the purposes of clause (2)(a), a business day includes every day other than a Saturday, Sunday or a day that is a public holiday as defined in the Employment Standards Act.

"Other remedies

"16.9 Actions taken by the owner under sections 16 to 16.6 are in addition to any other methods of enforcement and collection available at law."

The Chair: Do you wish to comment on this section?

Mr Baird: Maybe just a brief comment, and then if there are any questions pertaining to a specific part of the amendment.

The government feels strongly that everyone knows the rules and that they are spelled out so it's crystal clear. It's important that the new owner has some understanding that they will be able to collect tolls and that there be a clear code in place to collect and enforce tolls. Certainly I think every successive government has looked at collecting fines and enforcing other orders, and we've tried to provide a very clear and specific method right up front that will be effective, and a clear appeal process and how that would operate so it is crystal clear to all parties.

Section 16 has been reorganized and simplified and spells out exactly how those would operate.

Mr Pouliot: I don't mean to open the can, but following what you have said, I quickly went back to the beginning of your revamped process, of this amendment. I go to clause (d), right before "Dispute," which is 16.1. In the third last line, you say, "the registrar of motor vehicles may do so even if the failure to pay is disputed under section 16.1."

It seems unfair to some that someone's licence could be lifted while the matter is still in dispute. We built the 407, but we didn't have the chance to cut the ribbon. What happens now with 407 if you have a failure to pay but it's still under dispute? Does your licence get lifted?

Mr Baird: If I could just clarify something, under (d) it is not, of course, someone's driver's licence; it's the registration of their motor vehicle.

I would also refer you to 16.1(3), that payment is without prejudice.

As well, in terms of your question, the registrar's powers to refuse to validate the permit is consistent with the process outlined in the Capital Investment Plan Act, 1993, subsections 43(6) and (7).

Mr Pouliot: Your argument says it shall not withhold the right to dispute, but what you are saying is that the registrar of motor vehicles may refuse to validate the person's vehicle permit or may refuse to issue a vehicle permit to the person, and that the registrar of motor vehicles may do so even if the failure to pay is disputed.

Then you refer me to 16.1(3), under "Payment without prejudice," where you say "(3) The payment of a toll and related fees and interest shall not prejudice the right of a person who receives notice under section 16 to dispute...." That's not, with respect, the kind of rationale to support your amendment that I would expect. Of course you have the right to dispute, but even while disputing, you could have your registration lifted.

Mr Baird: Clause (d) deals with the notice provision, but your vehicle registration could not be pulled if you were under appeal. Section (d) only deals with the terms of the notice, but it couldn't be pulled. Perhaps my colleague could —

Mr Pouliot: You're like me; you don't perspire confidence in this one.

Mr Kenneth Kagan: If I may just clarify that point, the section is written on the basis that if a person pays the toll outstanding without prejudice, that precludes the owner from sending a notice to the registrar and denying the plate from being validated. If they don't pay the toll in that interim, within a 90-day period, only then can the owner send a notice to the registrar, and that starts the process for refusing to validate the permit when it comes up next for renewal. In the interim, the individual can still go to the dispute arbitrator for a decision. If the dispute arbitrator decides that the toll isn't to be paid, he notifies the registrar to lift the freeze on the licence plate. But the safeguard in this section is that the person pays the toll without prejudice, and then the registrar cannot refuse to validate.

Mr Cordiano: That's beginning to alarm me as well. In some cases these tolls can be quite significant in terms of the amounts of dollars we are talking about. Suppose an error were to occur. Suppose I was sent a bill for thousands of dollars for outstanding tolls.

Interjection: A trucker.

Mr Cordiano: Yes, a trucker. In the meantime, what you are suggesting is that they could freeze re-registration, correct? What you are saying is that they could freeze their registration at any point in time.

Mr Kagan: It doesn't work that way automatically, because if someone renews their vehicle permit, their licence plate, it either happens on a yearly or bi-yearly basis. When the notice goes to the registrar, they don't lift or pull the licence plate.

Mr Cordiano: It's flagged for the registrar.

Mr Kagan: It's just flagged for the next time it's renewed.

Mr Cordiano: What if it happens during the time when you're registering, close to the time when you need to renew your registration?

Mr Kagan: What the individual would have to do in that case is pay the toll without prejudice, and then the registrar won't be able to freeze it.

Mr Cordiano: That's ludicrous. What if it's an error on the part of the owner-operator? What if their computer has a glitch and suddenly there's \$10,000 of outstanding tolls that have not been paid by some error? This has happened to me with respect to the Attorney General's office, parking tickets, totally in error. That wasn't picked up. You could be in a situation where you no longer have the ability to renew your registration because of some error that it's outstanding, and therefore the registrar would lift your registration rights, or freeze them. I couldn't renew my registration. You would have to wait until you went through that process and cleared it all up. That could be days. For a trucker, they could be out of business.

Mr Kagan: But this section does provide that there is a minimum 90-day period. The trucker has received the invoice and has 35 days, first of all, to look at it and see if there's an error. After the 35 days is the first time the owner can send out a notice of failure. So there's every opportunity to talk to the owner about that problem. The owner then has to send out a notice of failure by registered mail or bonded courier to the trucker, who then has another 30 days to file a written dispute explaining what the problem is. Then there's another 30-day period — so you have a full three months — before which the owner can send any notice to the registrar. The owner doesn't have to send it on the 90th day. He may wait another three months. All I can suggest is that if there is a major problem, you would expect the owner to deal with the trucker and try to resolve it. It's in their mutual interest to try to do that.

Mr Cordiano: What I'm suggesting is that you could be in a dispute with the owner. It's taken, de facto, that their information is correct. Some of these computer glitches and computer errors may not be picked up for many months after the fact, so you could have a situation that arises. You will agree with me that that could be possible.

1110

The Chair: Mr Pouliot wants to jump into this argument, so we'll allow him an opportunity.

Mr Pouliot: Upon completion, and just hypothetically, of course — one way, 174 kilometres — Harry and Jane Smith are independent truckers and must pay for their vehicle, and it's an ongoing concern. You're charging them at peak times 30 cents a kilometre, so one way is \$52.20. Somehow they fall in arrears, and although you allow some mitigation — you're not completely callous in your approach because you're dealing with a client, so you don't cut off the electricity and put them on restricted service — you say: "OK, talk to us. What seems to be the problem?" It's a fairly large bill, and everything is relative.

But when you hit you say, "The registrar of motor vehicles may refuse to validate..." That's OK. It opens the door to say, "Talk to me, I'm a client." But once you move, you "refuse to issue a vehicle permit to the person and that the registrar of motor vehicles may do so..." So you don't kick me out, you don't kick Harry and Jane Smith, trucker, operator, mortgaged to the hilt, a small entrepreneur, off the 407; they can't even use the alternative. You kick them out altogether. Maybe I'm stretching it a bit but please bear with me. If I don't pay my Hydro bill, Bell Canada says, "Since you haven't paid your Hydro bill, we'll cut the telephone too."

What's at stake here is the bill that you've received, a user, for one purpose, the purpose is the 407. But if I don't honour that bill, I have a chance to mitigate, I have a chance to explain myself. But when you hit me, I can't even use the 401, because I don't have a permit.

1120

Mr Baird: Let me say at the outset that our discussion on this issue is certainly not a superficial one. We should all be justifiably concerned on these issues in terms of how people are treated by government.

I think it's important to remember three things. One is that my colleague from the Ministry of the Attorney General has laid out the — it's a pretty significant time period that goes in place. You obviously would get the notice. You have 35 days to review, 30 days in addition to dispute, and then 30 days for the owner to render a decision. So you're talking the better part of 100 days. That's not a shoddy, quick decision.

Mr Cordiano: Just for clarification, during that period of time, could the registrar freeze that registration should it happen to come up for renewal? This is what I'm getting at.

Mr Kagan: Not during the first 90-day period. The owner cannot give notice to the registrar to put a freeze —

Mr Cordiano: So after 90 days.

Mr Kagan: At least, and there's no obligation on the owner to send it on the 91st day.

Mr Baird: If I could just indicate, the registrar's powers to refuse to validate the permit are consistent with the process outlined in the Capital Investment Plan Act, 1993. Just so that I'm clear, I'll read subsections 43(6) and (7) of the text and then pass it around.

"(6) If a toll or fee is not paid within the 30-day period, the corporation may in writing notify the registrar of motor vehicles of the failure to pay and, if the holder pays the toll, fee and interest after the registrar has been notified of the failure to pay, the corporation shall notify the registrar in writing of the payment.

"(7) Upon receipt of a notification of failure to pay under subsection (6), the registrar of motor vehicles shall refuse to validate the permit for the vehicle in respect of which a toll, fee or interest is owed or to issue any permit to the holder for that vehicle until the registrar is notified by the corporation that the holder has paid the toll, fee and interest."

If you'd like to take a few minutes, I'll pass this around. It's certainly consistent with the process. It's been pushed up to 90, 95 days from 30.

It's a justifiable concern. When you talk about computer glitches, I think we've all looked at governments over the last 15 years of all parties and, believe me, it's happened. But it is increased from 30 days to essentially 90, 95 days.

Mr Cordiano: I don't know that that's enough time, to be honest with you, to clarify these matters. They can become awfully complicated, and I think that when it's somebody's livelihood we're talking about, I would not want to tamper with that. I would not want to be the government that does that to somebody's livelihood.

Mr Baird: I think it's obviously like everything the government deals with: It's a balance. If it were perhaps longer than 95 days, you might see an endless number of disputes and everyone would be delaying payment by disputes. There is a balance there. We're going from 30 days to what amounts to upwards of 95 days now. So it is a very delicate balance.

The owner and the registrar of motor vehicles will obviously want to be vigilant, as they would in the absence of this legislation, in anything that they do, whether it's with your parking ticket or what have you, that it operates well in the public interest, and in the owner's case, in the interests of their operation.

Mr Cordiano: I'm just cautioning the government that 95 days in this fast-paced electronic world we live in may not be sufficient time to uncover mistakes that occur, and they do occur regularly, and even more so today than ever before.

Mr Baird: We can uncover them within the first 35 and then there is the extra time.

I'm not disagreeing with you. I think we're going to want to be very vigilant, as we would in the absence of it. It has been increased from 30 to upwards of 90, 95 days, so there's a lot more flexibility built in there than there has been in the past. But I agree with you that we want to watch it exceptionally closely and have both the Minister of Transportation and the owner be very vigilant on it, and we as legislators, because I agree with you; no dispute here.

Mr Pouliot: You see, Mr Parliamentary Assistant, you've mentioned at some length balance, and in the same tone you said if we don't have a time limitation, everyone would. It's not a major sin. Maybe some would, but not everyone would push the envelope, push the limit.

My friend, one more time, I think is right on. This is not an option that closes at the end of the day, nor is it a margin called that is payable at the end of the business day. This is good business. If you go to a casino and you use markers, which is a line of credit, if you wish, all flexibility is exercised so that you don't lose them. It makes no sense to anyone to have a citizen not be like the others.

Sure, it has to be there, but I would wish to see it — and we still have third reading. Mr Advocate, if it is not fully clear, we still have third reading, and it's a minor

amendment. We want the assurance that this is a court of last resort. So we'd like the word "may" here. Don't think we're opposed to the direction, but if you lose your job, if you don't have the truck, the money doesn't roll in. I would imagine this will be used quite sporadically from time to time in extreme cases. But this is quite a hammer.

Many governments have drafted legislation and it looks very good on paper — and I say this with respect, regardless of stripe — and then you find out once you hit — remember the housing thing? The same happened to us — 51 amendments. I saw a bill that had so many amendments it was thicker than the original bill. Then they went back, because once it hit the street it was not applicable. I don't want to pick up the intellectual press, the Toronto Sun, the local tab down the street here, and have a headline that Harry and Jane Smith have applied for bankruptcy because they owe \$150 and they were on holidays and then they came back, the kid took sick — that's what I mean. I don't think this would happen under this anyway because they would have a chance to talk back and forth and to answer some letters, but to take away the permit is fairly draconian, I think.

Mr Baird: In the spirit in which your comments were made, we'll certainly reflect on what you've had to say. I think increasing it from 30 to 95 does deal with it, but in the spirit of what you've said, we'll take it back and reflect on the issue. The comment has been made that if there's clearly an error that's completely wrong, a computer problem, as the member for Lawrence mentioned, obviously the owner of the highway is going to want to solve it because they're going to be liable for all their costs. So if this trucker had to take a day off to go to dispute resolution, he'd be liable for their reasonable costs as set out in the act. So the owner has a significant interest in dealing with anything expeditiously.

On the property assessment thing, I heard one house that was valued at \$130,000 being valued at \$13 million. Obviously someone put their finger on the zero key an extra few times. That does happen and generally is dealt with expeditiously.

The one thing I would say as well, though, is that if you drove this thing 24 hours a day, you'd be hard-pressed to rack up more than \$1,000 a month. We heard from the Home Builders' Association that if they used it for a round trip the whole length, 160-odd kilometres a day, there and back, a round trip once a day, they'd be hard-pressed to run up more than maybe \$1,000 or \$2,000, taking a quick guess. The potential for anyone to owe \$20,000 in a month is pretty low.

Mr Pouliot: Just on that point alone, yesterday we had the privilege to listen to the Ontario Trucking Association. They are the acknowledged authority — and why not? It's their mandate — when it comes to trucking in Ontario. The great majority, percentage-wise, of truckers belong to the association and they've helped successive governments time and time again with their legislation. Their figures — and Hansard can attest to it — they've mentioned for a busy operator could be as high as \$20,000 per unit, and this was based on —

Mr Cordiano: It was 220 working days.

Mr Pouliot: — 220 working days. So you accumulate it. It does go quickly. Anyway, it's academic.

Mr Baird: It's their customer that's getting that \$20,000 a year. A good company is going to want to deal with any problem expeditiously. But I accept the spirit in which your thoughts are made and we'll take them back and reflect on whether an extension from 30 to 90 days is sufficient.

The Chair: Further questions and comments on this section? Shall this amendment carry? All those in favour? All those opposed? This amendment carries.

Further comments on section 16? Shall section 16, as amended, carry? All those in favour? All those opposed? Section 16, as amended, carries.

There are no amendments proposed for sections 17, 18, 19, 20, 21, 22, 23, 24 or 25. Are there any questions or comments to those sections? Seeing none, shall sections 17 through to and including section 25 carry? All those in favour? Opposed? They carry.

Section 26: We have a proposed government amendment on page 14.

Mr Baird: I move that subsection 26(1) of the bill be amended by adding "subject to any agreement entered into by the owner and the minister for privatization" at the end.

The amendment enables the minister to place limits on the owner's control of the Highway 407 land. It's required to ensure, for example, that the owner cannot use the right-of-way for utility purposes. I know in the hearings yesterday on a number of occasions, I remember the member for Yorkview mentioned the issue of controls on the ownership by the government. It's not just in the contract, but allows the minister to have a little expanded authority in respect to the control of the 407 lands.

Mr Pouliot: We're referring here to controlled access land. What we're saying is that two people, the contractor and the minister for privatization, can agree. I'm not just wondering about a third player, which is MTO policy. Does that not leave some possibility that the MTO policy will be violated.

Mr Baird: Just to address this specific comment, without an amendment of this nature, the owner's rights to control the Highway 407 lands would be the same as the Ministry of Transportation's rights to control the highway lands, and we want the minister for privatization to have the ability, if they choose, to place limits. In the absence of it, it would be the same as the Ministry of Transportation's rights.

Mr Pouliot: You make us quite nervous, because that's your style, that's the way you people operate — sometimes I wonder if you're the government — when it suits your purpose, and when it doesn't, then you give power away either to a minister or what you do is establish commissions and then you detach yourself.

I'll give you an example. Somebody says: "I do not close hospitals. I do not close schools." Who's in charge there? I'll tell you what you do: You go and say there's only so much money available, and then you say: "Oh, no, I have nothing to do with that. The municipality should be

able to enact a 10% tax break." Where is the supporting documentation? There's no such thing. "It's yours now, so you take care of it."

What I'd really like, and it took since Confederation to establish — granted, things move quite a bit faster — I'd like somebody to get up one day and stop saying "educrats" and "bureaucrats." As I said earlier, you can't begin to even cross the street. You are surrounded by a world of experts. They save our bacon daily. This place couldn't function here. It's the same for legislation. They're not numbers in a book or just vague faces in the crowd. I like the ministry, because I know when I was at transportation, whenever in doubt — ministers are given a lot of leeway; they're the ones who can call bills; or the Premier's office is given a lot of leeway — anyway, the political system, but then you have process, and the more you take away from process, the less guarantee you have.

I don't mind the global economy, I don't mind the marketplace — the more the merrier — but don't take all the referees out of there. Don't strangle them with regulations, but don't leave it to say, "It's going to be better, because of free enterprise it's going to be better." It might well be. It's more expedient in some ways, but the reason we're not so expedient sometimes is that we have many checkmarks in place. You talk about equilibrium, you talk about balance, but almost every bill seems to have a provision in it where it's taken away from the system. Sometimes it's better to do nothing, it's better not to change things. If the only reason you have is, "We can make a deal faster than somebody else," that's not good enough. I'm just cautioning you, and when I see this "entered into by the owner and the minister for privatization," I'm asking simply what happened to MTO policy. Does this give the right to people to violate, to ignore a policy, because two other parties have a say? That's my only question.

Mr Baird: Let me address both your concerns, your larger concern and then your specific concern with this amendment, in terms of the role that the public service plays in the implementation of policy. Our government believes strongly in performance measures with respect to the public service, and I suggest if you look at the ministry business plans and if you evaluate the performance of any ministry in the government, you're probably hard-pressed to find any other ministry that is as advanced as the officials and the staff and the team at the Ministry of Transportation. They are probably one of the best actors in government in terms of meeting performance measures, and that's black and white. You can even quantify it in numbers. I would certainly raise that, because I think it's an important point to address your concern with respect to that issue.

This amendment specifically allows the minister to raise the bar above the minimum standards of the Ministry of Transportation with respect to the right of way, for example, for utility purposes, if the minister wants to exceed that. Otherwise, the Ministry of Transportation regulation applies.

1130

Mr Pouliot: I came to this province to learn English, and you're not helping me. A standard is a standard. A standard is a criterion. You change the standard; you don't improve or deprive. You live by the standard. If you say, with all the confidence at your command, that allows the minister to raise the bar, when that bar starts moving, in my experience, if it allows to raise the bar it allows to lower the bar as well. It's almost like a slip of the tongue, because you have to address these matters meticulously. There's no leeway here. People say, "You have lowered the standards." If you have lowered the standards, it's because you have changed the standards. You cannot lower or have a higher standard. If the standard calls for this, that's what it is. If you change it, it calls for this and this and this. We have an amendment coming up under section 31, the last section of the bill dealing with that, but I have some difficulties once you get MTO out of there, or an invitation to bypass MTO.

They're experts, but in the worst-case scenario, you'll have ABC Co which is loaded by engineers. They get into the minister's office for privatization? Where is your balance there?

Mr Baird: I think the length that the government has gone to, and specifically the minister for privatization has gone to, to spell out in excruciating detail, particularly with respect to safety, the requirements of the potential owner of Highway 407, is considerable. I think the minister has gone the extra mile, and I congratulate him for it, because we've got a strong public policy just in maintaining the safety aspects of the road, and I think it's strongly maintained in the legislation, so we disagree.

The Chair: Further discussion on this amendment? Seeing none, I put the question. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion on section 26? Shall 26, as amended, carry? All those in favour? All those opposed? Section 26, as amended, carries.

There are no amendments proposed for section 27 or 28. Questions or comments to either of those sections? Seeing none, I put the question. Shall sections 27 and 28 carry? All those in favour? Opposed? Both those sections carry.

Section 29, A government amendment is proposed by Mr Baird. This is found on page 15.

Mr Baird: I move that subsection 29(4) of the bill be amended by adding the following clause:

(a.1) enter any place, other than a dwelling, at any reasonable time, if the official reasonably believes that it is likely to contain records relating to compliance by the owner with ministry safety standards."

This relates to what I just said. The minister wants to ensure that it's able to enforce on a very strict basis the public safety requirements that the ministry is maintaining and wants the ability to enforce that, because safety is exceptionally important in this issue.

Mr Pouliot: I'm not going to ask about "reasonable time." This wording is also found elsewhere in the act, I believe.

The Chair: I'll put the question. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Further discussion to section 29? Shall section 29, as amended, carry? All those in favour? Opposed? Section 29 carries.

Section 30, there are no amendments proposed. Any discussion to this section? Shall section 30 carry? All those in favour? Opposed? Section 30 carries.

Section 31, A government amendment is proposed, found on page 16.

Mr Baird: I move that section 31 of the bill be struck out and the following substituted:

"Higher standard

"31(1) Despite section 28, if the Minister of Transportation is of the opinion that the management of all or part of Highway 407 should meet a higher standard than ministry safety standards, the minister may enter into an agreement with the owner whereby the owner agrees to undertake the additional work necessary to meet the higher standard.

"Where no agreement

"(2) Failing an agreement under subsection (1), the Ministry of Transportation may undertake all or part of the work required to meet ministry safety standards and to meet the higher standard and, if it does so, the costs of undertaking the work shall be paid as follows:

"1. To the extent that the work done is necessary to comply with ministry safety standards, the owner shall pay the costs of undertaking the work.

"2. To the extent that the work done is necessary to comply with the higher standards, the ministry shall pay the costs of undertaking the work.

"Same

"(3) For the purposes of subsection (2), the costs that the Ministry of Transportation must pay shall include any loss of revenue that is directly related to the work required to meet the higher standard."

Just briefly. This amendment clarifies that only the incremental costs resulting from the imposition of a higher safety standard by the Ministry of Transportation, higher than the ministry's own safety standards, are to be paid for by the ministry. In the event that a higher safety standard than was taken on another highway was deemed advisable and in the public interest, the minister would have the ability to step in and ensure that the public interest was served in that regard.

Mr Pouliot: Again, it's a matter of fundamentals. It's such a departure. You have a case that's bound to happen in time: The ministry says, "In our view, in our opinion, we should change the standards to make them higher." They try to negotiate with the owner. Failing an agreement, they still have the right to make the standards possible, in which case they will pay for them, and also the people will pay for lost business.

I like wording which is a little — it's not an escape clause, but something which gives the government a little bit of flexibility. We constantly talk about shared onus, dual responsibility. I'm not a lawyer — suffice that I'm a politician; that's enough — but people of that most honourable profession, who abound at Queen's Park, will say, "My God, if I'm there to protect the government," it does not jeopardize the thing. What you're saying is it's wide open, this clause. You live with this and keep your fingers crossed that no calamity will take place, and if you want to change, if you want to upgrade it, you pay and you pay for the loss of business.

Failing to negotiate — the attorneys for the contractor, for the owner, are saying, "Tell them to go and jump in the lake." People are too intelligent. They don't talk that way. They'll say: "We just don't have the funds right now. Let MTO do it." If anything happens there, it's not the contractor that's going to take the hit, I can assure you. It will be the responsibility of the government, and you're not protecting yourself.

The Chair: Further discussion? Seeing none, I put the question. Shall this amendment carry? All those in favour? All those opposed? This amendment carries.

An NDP amendment, Mr Pouliot, found on page 17.

1140

Mr Pouliot: Let me make the point again. This is the same subject matter.

I move that section 31 of the bill be amended by adding the following subsections:

"Limitation

"(3) The Minister of Transportation may require that standards higher than ministry safety standards be met under this section only if doing so is reasonable and necessary in order to ensure public safety.

"Same

"(4) If the Minister of Transportation requires that standards higher than ministry safety standards be met under this section, the minister shall publish and make available to the public its reasons for doing so."

If certain conditions are met, it allows the ministry to do exactly what I just read, to move the bar.

Mr Baird: I appreciate the intent with which the member is coming forward with his amendment, and I reflected on this, as I recall seeing it. I'm unclear whether it's something that's necessary in legislation. I appreciate where he's coming from and the spirit in which he's offering his suggestion. As a former Minister of Transportation, I'm sure he's well versed in the whole issue of public liability for the 23,000 kilometres of public highways in Ontario, and certainly the concern at the ministry is probably equally as great as it was when he was the minister, so the policy hasn't changed. We still operate with that.

Obviously, if there's the expenditure of any public funds, it's done completely in the public environment and they're accounted for in the public accounts and in the assembly. From that perspective, they'll have to be justified in that regard. In terms of putting in place a public requirement, it raises issues of public liability, and that

policy, I'd suggest, hasn't changed since he left the keys to the limousine at the receptionist's desk.

Mr Pouliot: The limousine, sir, was a five-year-old Chevrolet Caprice.

Mr Baird: Those are the words you used, limousine. Those are your words, not mine.

Mr Pouliot: I should be oblivious to this, but I'm listening to your comments, and I give them full appreciation. The reason why we counter-drafted was that I looked at this, and I found your position and opinion fundamentally different from ours. I've explained this before. So I drafted something that has only one onus.

We don't foresee too many changes to standards, but sometimes, and it happens — and I have my expert friends at transportation, former colleagues — in the worst-case scenario, it meets all the standards; granted, that's a given. But 10 people in the past two years have been killed at this intersection. Obviously something needs to be done. So you inquire, you really see if it meets all the standards, that the curve, the banking is perfect.

Your owner has an ability to adjust. He can recuperate the cost. It's the cost of doing business. Why shouldn't it be a dual responsibility, even if you had to go to a third party to arbitrate, to say, "This is the way we see these standards"? Why should the government get none of the benefits and pay all of the costs? Some partnership.

I would prefer that we go to the operator and say, "We're going to do this," or, "This needs to be done." Put the onus on the positive. The operator must find a way to do it, must negotiate with the purpose in mind to find a way to achieve that. Then you establish your mechanism to achieve what needs to be changed, as opposed to saying, "Well, if you don't get an agreement, you pay." Then you pay for lost business. To me it's not that kind of relationship. Maybe if you live in the best marriage with those people, you ask nothing and you get nothing — the perfect marriage.

I think there's a way if we just twist it around, put it in the positive. We both pay, we both look at it together and we develop a mechanism to make it happen, as opposed to saying, "We're going to pay, and we'll talk to you," and you tell us to go fly a kite and then we'll pay. That's why we say, if you want to load it, it's not going to pass. We're not juveniles here. This is unpalatable, if there's any such terminology.

Our amendment is exactly the opposite of yours. We say: "We set the standard at MTO. Let them pay." But in there, there's a compromise.

Mr Baird: I think there has been a terrific amount of discussion on this issue at MTO with the minister. I know among our caucus colleagues we take road safety issues very seriously.

Mr Pouliot: Everybody says that.

Mr Baird: I think the record of this government is pretty good on road safety. To be non-partisan, we've got all-party support for tough drunk driving legislation. We've made good progress in that area.

I think what the legislation says with respect to safety is that the private operator must live up to the same high

standards that MTO has for their roads. On occasion, there may be an issue where it's a good idea to wear a belt and suspenders; it may not be entirely justifiable. I know in my own constituency there is a road built by MTO and we're looking at if we can get it reconfigured. The engineering folks tell us that it's a safe road. Is it as safe as it could be? We sometimes want to go the extra mile more than we're perhaps required to do.

The amendment that we just dealt with seeks to make it an issue that if the ministry feels strongly and wants to step in and impose an even higher standard and wants to raise the bar in a particular area, it has that ability to do so. To be quite genuine, the government appreciates the comments you've made, and the previous amendment tried to raise the bar; that if we want to go in and raise the bar, we'll pay you to do so.

Mr Pouliot: I'll give you another scenario which, again, you must envisage. Standards are good, but now they have to be either improved or whatever. The owner tells you that it's unsafe. "Minister, this part of the highway is unsafe. It doesn't meet the standard." You don't have an agreement here; that's the owner telling you that. He wants the improvement done. In a worst-case scenario, again, he might wish to raise the fees because of the new addition. But he doesn't have the money to do it. You are compelled to do it. You don't even make your own decision. He says, "I have no money to do it, but I know it's unsafe, and I know it should be fixed." In this case, the ministry says: "We're going to pick up the loss of business because of detours. We're going to close one lane or two. Not only that, but I'll pick up the costs, because the owner told me to." It can be farcical.

The good solicitors we have must be given direction, directives by the ministry, how you want to play this, how you want to draft this. It's one-sided. I have some difficulties with that.

Mr Baird: To answer the direct part of your comments, which I don't think are invalid, if there is a part of this road that, once constructed, is revealed to be unsafe and not up to standards and this operator does not want to repair it or doesn't have the money to repair it, we're going to step in, we're going to repair it, we're going to send them the bill, if it's not up to the high standards that MTO sets. That's very clear. I think that's pretty clear in the legislation, just as the government stepped in and wouldn't allow the thing to open until it was up to scratch over the past 24 months.

Mr Pouliot: With due respect, the world abounds with cost overruns, with jobs hanging in the balance and with spin doctors. It's not that simple. I don't see in the legislation any protection at all for the taxpayers. I see a one-way street here. The owners have every right. You don't even stipulate what changes we're talking about.

1150

Mr Baird: They don't have a right to operate an unsafe road, period. That's black and white. They can't operate an unsafe road. If it's not up to standard, they're abrogating their contract.

Mr Pouliot: Every time you change a regulation, that impacts the private sector almost daily. They have to comply. That's the cost of doing business here.

Mr Cordiano: Can I make a point here?

Mr Pouliot: I'll just finish briefly. That's the cost of doing business.

Mr Baird: I agree.

Mr Pouliot: Now you go to these people with cap in hand and you say, "If we change anything, we're going to pay for the loss and for the cost of business." Go to Coca-Cola and tell them about recycling. Go to Pepsi-Cola and tell them about bottling. They're doing it every day federally and provincially. When you passed legislation to have labelling in this country in both official languages, for people in Alberta and other provinces it was an added cost, it costs money. Did the government come in? No. The government passed the legislation. Standards are set all the time. The paper mills have to change with AOX and others because the technology exists to render a system better. What do we do? Do we send millions and billions of dollars to corporate Canada and say, "We're going to do the job for you"? What is the bloody difference, sir?

Mr Baird: As we raise the standards, though, for the limited-access 400 series highways around the province, they have to raise their standards as well. Those standards evolve over time, over the next five years, the next 25 years.

Mr Pouliot: Excuse me. You're no longer there. This is not your highway, the people's highway any more. There's a new owner. You have to sever the cord. You cannot be tied umbilically to those people any more.

Mr Baird: But on safety standards, we are.

The Chair: Excuse me. Mr Cordiano wants to jump in. But I would caution members to direct their comments to the Chair, please.

Mr Cordiano: This raises an interesting point, because once the highway converts to private hands, the auditor we talked about earlier, who had 96 pages of his report dedicated to Highway 407 and the unsafe conditions before it opened, will no longer have access to the same kinds of books, the same financial documents and the same ability to audit once the sale is consummated. The extensions will not be subject to any of those kinds of audits. They'll be scrutinized by the Ministry of Transportation officials to see that they meet those standards, but how is the public going to be reassured that those safety and maintenance standards are being met? There's no provision for that.

Mr Baird: I think the ministry as the regulator in this regard is going to play an ongoing, significant and strong role with respect to safety, not just in terms of the design, not just in terms of the operation but as the ministry raises the bar and as we learn, as we do, from technology and experience. We don't have to pay. What we're saying very clearly in the legislation is that the new owners have to live up to the same high standards to which the ministry operates their limited-access 400 series highways; that if

we raise the bar for ourselves, the bar is automatically raised for them and that they have to pay.

Mr Cordiano: But in the 407 case, the bar wasn't even high enough.

Mr Pouliot: On a point of order, Madam Chair: "Failing an agreement under subsection (1)," — the ministry goes and contacts the owner and says: "We are changing this rule. Will you co-operate?" Failing an agreement, if the owner says, "No agreement," then the ministry "may undertake all or part of the work required to meet ministry safety standards and to meet the higher standard and, if it does so, the costs of undertaking the work shall be paid as follows.... the ministry shall pay," and it will also pay for the cost of business.

When you tell Dow Chemical and other chemical companies that the toxicity level must be dropped, do you send them money to compensate? No, you don't. What I'm saying is, treat them like all other industries. They're independent now. They're the new owner. You set the rules; we do universally. We regulate almost anything. That's the way it should be. You don't have a free-for-all. So why the exception when it comes to the highway? It's because your mindset is that we are still tied to the highway, we are the highway. Well, you are no longer; you just sold the highway. It's no longer your money, because if you do so under every act, every industry where you set standards, and you change standards because the world changes, you don't send one penny in 95% of the cases to anybody making the changes. Am I right?

Mr Baird: You can selectively interpret this: "To the extent that the work done is necessary to comply with ministry safety standards, the owner shall" — not "may" — pay the costs of undertaking the work." It even goes further in the paragraph preceding that: "Failing an agreement under subsection (1), the Ministry of Transportation may undertake all or part of the work required to meet ministry safety standards" and bill the owner — black and white right there.

Mr Cordiano: What about the loss in revenue? I don't understand why "the costs that the Ministry of Transportation must pay shall include any loss of revenue that is directly related to the work required to meet the higher standard."

Mr Baird: If the ministry thought it would be in the public interest to have a higher standard on Highway 407 than they would otherwise compel themselves to undertake, that they would pay. Sometimes it may be argued in the public interest to wear a belt and —

Interjections.

Mr Pouliot: I know we're running out of time, Madam, but —

The Chair: We are out of time. I must interrupt.

Interjections.

The Chair: I think we have had further discussion on this particular amendment. I am going to call the question on this amendment.

Mr Cordiano: Recorded vote.

Mr Baird: This is not the amendment. We already dealt with that amendment.

Interjections.

The Chair: Order. We're dealing with an amendment to section 31. It's the NDP amendment found on page 17. It is 12 of the clock so we're going to go into the standing order rules. The procedure is, if you've called for a recorded vote, that will be done at the end as opposed to while we're going through these votes now.

Mr Baird: Could I suggest just for ease of argument that we vote on this amendment?

The Chair: All right, we'll finish off this one then. Shall this amendment carry?

Ayes

Cordiano, Pouliot.

Nays

Baird, Chudleigh, Galt, Hastings.

The Chair: The amendment is lost.

Shall section 31, as amended, carry? All those in favour?

Mr Cordiano: Recorded vote.

The Chair: We'll stack them up and do it at the end.

Shall section 31, as amended, carry? All those in favour? All those opposed? Section 31, as amended, carries.

We have a Liberal amendment on page 18. Shall this amendment carry? All those in favour? All those opposed? This amendment is lost.

A government amendment to section 32: Shall this amendment carry? All those in favour? All those opposed? This amendment carries.

Shall section 32, as amended, carry? All those in favour? All those opposed? Section 32, as amended, carries.

Section 33: No amendments proposed. Shall this section carry? All those in favour? All those opposed? Section 33 carries.

Section 34: Government amendment found on page 20. Shall this amendment carry? All those in favour? All those opposed? This amendment carries.

Shall section 34, as amended, carry? All those in favour? Opposed? It carries.

Section 35: No amendments proposed. Shall this section carry? All those in favour? Opposed? Section 35 carries.

Section 36: One government amendment is proposed. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 36, as amended, carry? All those in favour? Opposed? Section 36, as amended, carries.

Sections 37, 38, 39, 40, 41, 42, 43 and 44 have no amendments proposed. Shall sections 37 through to and including section 44 carry? All those in favour? Opposed? They carry.

Section 45 has a government amendment. This is found on page 22. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 45, as amended, carry? All those in favour? Opposed? It carries.

Sections 46, 47, 48 and 49 have no amendments proposed. Shall sections 46 through to 49 carry? All those in favour? Opposed? These sections carry.

Section 50 has a government amendment proposed, found on page 23. Shall this amendment carry? All those in favour? Opposed? This amendment carries.

Shall section 50, as amended, carry? All those in favour? Opposed? Section 50, as amended, carries.

Sections 51, 52, 53, 54 and 55 have no amendments proposed. Shall those sections carry? All those in favour? Opposed? Sections 51 to and including 55 carry.

Section 56: A government amendment is proposed, found on page 24. All those in favour of this amendment? Opposed? The amendment passes.

Shall section 56, as amended, carry? All those in favour? Opposed? Section 56, as amended, carries.

Sections 57, 58 and 59 have no amendments proposed. Shall these three sections carry? All those in favour? Opposed? Sections 57, 58 and 59 carry.

Section 60, the short title of the bill: Shall this carry? All those in favour? Opposed? This carries.

Shall the long title of the bill carry? Carried.

Shall Bill 70, as amended, be reported to the House? Agreed.

Colleagues, that concludes our clause-by-clause work today. We are adjourned and we'll reconvene when the next business is sent our way as the resources development committee. Thank you all for your work this morning.

The committee adjourned at 1203.

CONTENTS

Friday 20 November 1998

| | |
|---|-------|
| Highway 407 Act, 1998, Bill 70, Mr Sampson / Loi de 1998 sur l'autoroute 407, projet de loi 70, M. Sampson..... | R-583 |
|---|-------|

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr John R. Baird (Nepean PC)

Mr Joseph Cordiano (Lawrence L)

Mr John L. Parker (York East / -Est PC)

Mr Gilles Pouliot (Lake Nipigon / Lac-Nipigon ND)

Mr Mario Sergio (Yorkview L)

Also taking part / Autres participants et participantes

Mr Kenneth Kagan, legal services branch, Ministry of Finance

Clerk / Greffier

Mr Viktor Kaczkowski

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service
Ms Sybille Filion, legislative counsel

CADON
XC13
S76



R-17

R-17

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Monday 14 December 1998

Journal des débats (Hansard)

Lundi 14 décembre 1998

Standing committee on resources development

Environmental Protection
Amendment Act, 1998

Comité permanent du développement des ressources

Loi de 1998 modifiant
la Loi sur la protection
de l'environnement



Chair: Brenda Elliott
Clerk: Viktor Kaczkowski

Présidente : Brenda Elliott
Greffier : Viktor Kaczkowski

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Monday 14 December 1998

Lundi 14 décembre 1998

The committee met at 1543 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mrs Brenda Elliott): Good afternoon, everyone. The standing committee on resources development is called to order for the purposes of hearing presentations on Bill 34, An Act to amend the Environmental Protection Act.

Our first order of business is the draft report of the subcommittee. Do I have someone who will move this?

Mr Peter L. Preston (Brant-Haldimand): So moved.

The Chair: Questions or comments on this subcommittee report? Seeing none, shall this report be accepted? All those in favour? Carried. That was easy.

ENVIRONMENTAL PROTECTION
AMENDMENT ACT, 1998LOI DE 1998 MODIFIANT
LA LOI SUR LA PROTECTION
DE L'ENVIRONNEMENT

Consideration of Bill 34, An Act to amend the Environmental Protection Act / Projet de loi 34, Loi modifiant la Loi sur la protection de l'environnement.

The Chair: Now we come to the most interesting part of the day. This is a private member's bill and it has been proposed to the Legislature by Jack Carroll, so we're going to begin our hearings today with a presentation from Mr Carroll. Welcome, Mr Carroll. As I'm sure you know, you have five minutes for presentation time, and we look forward to your report.

Mr Jack Carroll (Chatham-Kent): My comments are going to be very brief because what I have to say won't be nearly as important or as interesting as what our presenters have to say.

The thing I feel good about is the fact that we have got to the point where we're going to have a public discussion about this issue. I think it's important that we have that public discussion. The environment and ways to protect it are important to all members of society so I think it's good that we've elevated this to a public discussion.

The bill, while it doesn't talk specifically about ethanol, talks about the environment, talks about oxygenating agents and of course it deals with renewable fuel sources, and it creates some positives. Obviously, from an

environmental standpoint, it reduces the emissions of benzene and carbon monoxide. There has been a study done in the northeast states of the United States that talks about the positive effects on cancer risk as a result of the use of oxygenating agents, so there is a health issue here. It will be interesting to hear what the OMA has to say when they come forward.

As a renewable fuel source, it causes us to be less dependent on foreign crude oil, which some might argue is a good target. I think it is a good target and certainly members of our government do.

I do want to compliment the New Democratic Party. Howard Hampton certainly has been supportive of this. I know our ethanol plant in Chatham-Kent is there due in large part to the efforts put forward by the members of the New Democratic Party. Elmer Buchanan was the minister at the time, Randy Hope was our local member. I know their position on this alternate fuel has been very strong and I compliment them on that.

The thing I look at is that the technology exists. We see it between Commercial Alcohols and Sunoco and Suncor to merchandise a fuel that is up to a 10% blend of ethanol. That fuel has been given a green ecology label by the federal government. I'm not an expert in matters of ecology but, based on the information I have read, it would appear as though gasoline blended with ethanol is more friendly to the environment than gasoline that isn't blended with ethanol or some similar oxygenating agent.

If the technology exists, and if it is effective, then the question I ask myself is why is Sunoco the only company, along with UPI, that I'm aware of down our way that in fact sells all their gasoline with the ethanol blend in it. It will be interesting to hear the other gasoline producers talk to us about that. I'm sure they will tell us, "We don't want you to mandate how we have to do things." I guess the question I would ask is, when will you do it if we don't mandate that you do something?

It's going to be an interesting day. I thank all of you who have taken the time to come forward. I thank the committee for allowing public hearings on a private member's bill. It is rather unusual, but we've gotten to this point. A lot of people had a hand in this getting to this point. Madam Chair, I thank you for that. I thank all the members of the committee and I thank all presenters who have taken the time to come forward. I know you're not all going to agree and that's great. If everybody agrees, we have to think that maybe this isn't that good. I'm

interested in hearing the dialogue and hopefully we'll have a chance to have a good public discussion and move the agenda forward in whatever direction it should go.

COMMERCIAL ALCOHOLS INC

The Chair: On that note, we welcome our first presenters for the afternoon, representing Commercial Alcohols Inc. Please, would you come forward. Are you Mr MacKenzie?

Mr Doug MacKenzie: Yes.

The Chair: Welcome. If you'd like to introduce yourself formally for the Hansard record, you have 10 minutes for presentation time. If you wish, you may leave time in that 10 minutes for questions.

Mr MacKenzie: I'm Doug MacKenzie. I'm president and CEO of Commercial Alcohols. Prior to taking this position, I spent 23 years in the oil industry in various capacities including several senior executive positions. For those of you who don't know, and I think most of you do, Commercial Alcohols is Canada's largest producer of industrial and fuel alcohol. They are essentially one and the same.

With our newly commissioned plant in Jack's riding, along with our prior plant in Tiverton, Ontario, and our packaging businesses in Tiverton and a newly acquired business in Danbury, Connecticut, we are now the largest packager of industrial alcohol in the world. As Jack said, a lot of thanks goes to the former government and some of the members there for some support along the way, and to Jack himself and Premier Harris. So we are on our way to becoming, with a new plant in Quebec and expansion of Chatham, the third-largest distiller in the world. We expect that in about two to three years.

1550

I'd like to make three comments in my submission, and I must say that it's impossible to talk about this in 10 minutes or less — Jack knows I can't spell "ethanol" in less than 10 minutes — so I'm going to skim through. I've put some more detail in the brief. I would also be glad to provide any evidence in due course. We obviously can't spend a lot of time debating some of the issues, but I'll give you an overview of some of my perspectives.

First of all, putting oxygen in gasoline, when properly blended, can have a material effect on environmental emissions. As a subset of that, it can also, when looked at in a global economic perspective, be very competitive with oil-based products, assuming crude oil is something more than \$3 or \$4 a barrel.

Second, ethanol is a very acceptable product to blend with gasoline in almost any level, including up to 100%. There are cars that burn 100% ethanol. By the way, the environmental benefits also improve when the blends get above 10%, into 20%, 30% and up to the full 75% or 80%. The blends in Brazil typically are 22% to 26%.

Third, the oil industry will not voluntarily accept such changes as suggested by this bill nor any other material changes, nor have they in the past unless a gun has been to their head, to make some fundamental changes to gasoline.

I'll come back with a quote later dealing with some of those issues. Some examples include lead reduction — and I was chairman of the CPPI when that process was going through federally — MMT, sulphur in diesel and sulphur in gasoline.

I would like to add that I am referring here only to the industry as a collective group, both in the United States and Canada. There are, however, many companies such as Sunoco and one other in Quebec that are taking a very progressive and environmentally positive stance. For this, I think they deserve a great deal of credit.

First of all, dealing with the environment, ethanol, a renewable fuel that can be made from agricultural crops, is one of the best tools we have to fight air pollution. Ethanol reduces pollution through volumetric displacement of gasoline components to help greatly reduce exhaust emissions. In fact, the use of ethanol results in reductions in every pollutant regulated by the US Environmental Protection Agency, including ozone, air toxics, carbon monoxide, particulate matter — PM 10 — and oxides of nitrogen. The EPA considers ozone to be one of the most widespread air pollution problems.

Ethanol provides the following environmental benefits — in my text I've given you a paragraph or a page or two on each one; I won't go through them all, but I'll just highlight them: reductions in carbon monoxide emissions up to 30%; reduction in greenhouse gas emissions; reduced exhaust VOC emissions and ozone formation from exhaust tailpipes; reduced NO_x emissions up to 2% — there has been a debate on that issue, but more recent studies conclude that in fact there is up to a 3% reduction; reduced air toxics emissions up to 30%; reduced particulate matter, PM 10, emissions.

Nobody's talked an awful lot about this, but particulate matter with diameters of less than 10 micrometres is emitted from a variety of stationary and mobile sources. PM 10 is regulated by the UPA because these small airborne particles can reach the lower levels of the respiratory tract and cause serious health problems, including damage to lung tissue, cancer and premature death. The use of ethanol significantly reduces the tailpipe emissions of PM 10.

Ethanol, in terms of the clean air solution: Because of the environmental benefits, the US Clean Air Act requires the addition of oxygenates such as ethanol to gasoline in areas that exceed public health standards for ozone and carbon monoxide, known in the US as non-attainment areas. Today, approximately 35% of the nation's gasoline contains some level of oxygenate in order to reduce harmful emissions and improve the US's air quality.

Finally, to support some of that, the Argonne National Laboratory, in its recent study, Fuel Cycle Fossil Energy Use and Greenhouse Gas Emissions of Fuel Ethanol, found that corn-based ethanol results in a 35% to 46% reduction in greenhouse gas emissions and a 50% to 60% reduction in fossil energy use.

Second, ethanol is a very acceptable product. Ethanol refineries are excellent economic vehicles. If you look through the whole system, you'll see that they create more

jobs per gallon than oil refineries. Sometimes oil companies argue that ethanol is bad for the environment. It's hard to make that argument because, to me, it flies in the face of common sense. How can replacing the most toxic parts of gasoline with a drinkable liquid degrade the environment? Ethanol blends can reduce the overall toxicity of gasoline. Ethanol reduces climate-altering greenhouse gases and, unlike oil spills, ethanol spills are not an environmental hazard.

Given that ethanol is a liquor — and some of you would know it more commonly as vodka, which simply has 60% water added — the base chemical in drinkable alcohols, I sympathize with those who think it's too good for our cars. But I'm taken aback by some who claim that cars are too good for ethanol. Your car is more likely to be harmed by the remarkable variations in ordinary gasoline than by ethanol. Since 1990, GM has recommended ethanol-blended fuels for its cars. US motorists have driven more than a trillion miles on ethanol blends with no problems.

Third, oil companies will not voluntarily change. I don't think I have to remind you of the various changes that have had to be brought forward to force the oil companies to change, whether it was final legislation or simply a gun to the head. First, it was the elimination of lead. It's a tremendous precedent to take a look at and study.

Allow me to paraphrase some excerpts from a speech by David Morris of the Institute for Local Self-Reliance: In 1923, ethyl, as leaded gasoline was popularly called, went on sale, but an explosion at a Standard Oil refinery in New Jersey killed several workers and severely injured many others and the nation became aware of the dangers of high lead levels. Were there problems caused by low lead concentrations? To answer that question, the Surgeon General convened a task force. A year later it gave leaded gasoline a clean bill of health.

Fifty years later historians found that Ethyl Corp had used its partners' considerable clout to manipulate public opinion and interfere in the fact-finding process. Ethyl argued that since leaded gasoline had been used for two years and no problems had appeared, it was clearly safe.

By 1940, the majority of all gasoline had lead in it. Thirty-five years later the EPA reduced the allowable level of lead in gasoline because it interfered with the efficient workings of catalytic converters. In the 1980s, the overwhelming evidence of lead-associated damage in children's nervous systems led to the phasing out of lead in gasoline. Of course, that was fought every step of the way.

When lead was banned in the US, lead continued to be sold overseas. Lead levels along the roads in Nigeria are reaching, and have been reaching, the order of 7,000 parts per million, about 15 times greater than the level required to be designated a Superfund site in the US. In Mexico City, half the children tested have dangerous levels of lead. In fact, the continuing reluctance of the oil companies to voluntarily eliminate lead in least-developed countries speaks tonnes for their motivation.

In 1954, a substitute was invented for lead. Based on another heavy metal, manganese, the additive is called MMT. But MMT was never as cost-effective as lead and thus enjoyed only a small commercial success. When the EPA began to phase out lead, sales of MMT started to expand. The EPA tried to ban it, but eventually the federal court ruled that the EPA had no authority to deny the use of gasoline additives for health reasons. The Canadian government, unlike the EPA, has allowed the use of MMT since 1977.

Scientists know that manganese does cause brain damage when inhaled in high doses. We don't know what its effects are at low dosages. Ethyl and the oil industry assure us that everything is fine because MMT has been used in Canada and no one has been injured yet. Given the terrible results from previous policy mistakes regarding lead, the EPA prefers to err on the precautionary side, but US courts have denied it that right. Canada too, although for different reasons, has tried to adopt a conservative approach. There is a similar pattern to the reduction of benzene, reduction of sulphur in diesel, reduction of sulphur in gasoline etc.

In summary, it's a very difficult topic to cover, summarize and debate in detail in 10 minutes or less, but very simply, putting oxygenates in gasoline, when properly blended, can have a material reduction on environmental emissions. Ethanol is a very acceptable product to blend with gasoline and it will be difficult to make those changes unless there is some regulatory direction with respect to changing the gasoline quality in Canada.

There is some good news in some headlines recently around North America: Life magazine recently rated air-friendly ethanol among the 100 best things about America now; government vehicles in Mexico City are mandated to use 10% ethanol blends currently, and Mexico City is one of the worst pollution areas in the world; California is one step away from allowing ethanol; "US Senate Votes to Extend Ethanol Tax Incentive"; "Minnesota's Successful Oxyfuel Program Prompting Other States"; "E85 Use Will Rise Substantially By Year 2004". E85 is an ethyl 85 blend. A lot of car manufacturers are making vehicles to allow its use today.

In conclusion, in support of this bill and debate around it, I would like to remind you what Bertrand Russell once said about the distinction between change and progress:

"Change is inevitable, while progress is problematic. Change is scientific, while progress is ethical. Change will come about whether we will it or not. But progress will be achieved only if we make rules that channel scientific genius and entrepreneurial energy and investment capital in directions compatible with our values." I suggest that environmental cleanup is one of our values for society. Thank you.

1600

The Chair: Thank you very much, Mr MacKenzie. A profound beginning to our presentations this afternoon. Regrettably, there is not time for questions, and that may be a frustration we have from time to time this afternoon, but I can assure you that we thank you very much for

coming before us with this presentation. I know that if my colleagues around the table feel the need to ask you questions, they will call you personally.

Mr MacKenzie: I'd be delighted.

CANADIAN RENEWABLE FUELS ASSOCIATION

The Chair: I now call representatives from the Canadian Renewable Fuel Association, please.

Mr Jim Johnson: Thank you, Madam Chair. On behalf of the Canadian Renewable Fuels Association, I would like to thank you and your colleagues on the resources development committee for the opportunity to discuss the important issues surrounding Bill 34.

Mr Preston: Please identify yourself.

Mr Johnson: I'm sorry. I'm Jim Johnson and I'm with the Canadian Renewable Fuels Association.

Our members include agricultural and forestry organizations, engineering and energy firms and environmentalists. The association's efforts have been largely devoted to the promotion of ethanol, made from biological materials, for use in the transportation sector.

The CRFA supports the desire of the member for Chatham-Kent to put forth Bill 34 to improve air quality. We are very concerned about clean air, we're also concerned about global warming, the rural economy, and Canadian energy self-sufficiency. We believe that ethanol offers an excellent opportunity to address these concerns.

Traditionally, blended ethanol has been what we call a low-level blend, in the 5% to 7% range, the rest being gasoline. This blend does not require any vehicle modification, which is very important because we feel we can get the product into the gasoline stream very efficiently in this manner. Right now in Canada there are approximately 1,000 stations selling ethanol-enhanced gasoline. Ontario is the leader in this. It has over 527 stations as of November 1998, and those are just the stations we have on record. There may be others that haven't notified our organization.

The benefits of ethanol are many and varied and compelling. Air quality is certainly one of the issues that very much concerns the Canadian Renewable Fuels Association. One of these is in the area of smog formation or ozone formation. Environment Canada believes that smog is responsible for thousands of premature deaths in Canada. Although it's hard to put a price on human life and human health, it has been estimated that it costs up to \$10 billion a year for health costs, lost productivity and other constituents because of the damage done by smog. We believe that ethanol can play an important role, particularly properly blended ethanol, in reducing the levels of smog. The compounds that we can reduce are carbon monoxide, VOCs, which are volatile organic compounds, aromatics such as benzene, and nitrous oxides.

As an oxygenate in the 10% ethanol blend we can reduce carbon monoxide emissions from 25% to 30%. We also reduce volatile organic compounds by up to 7%,

particularly unburned hydrocarbons. Ethanol is a substitute for benzene and other aromatics which have been linked to cancer-causing phenomena, particularly benzene. Benzene has recently been reduced from a high of around 5% to below 1.0% in Canada. Ethanol really has two benefits in that scenario in that benzene is produced to increase the octane level of gasoline, and ethanol has an excellent octane-enhancing capacity in its own right. Therefore, if you remove the benzene and other aromatics, you can replace them with ethanol and get the same octane benefit. Also, because ethanol itself doesn't contain any aromatics, the addition of the ethanol further dilutes the amount of aromatics that are left in the gasoline. It also reduces the amount of sulphur in gasoline, because ethanol is a pure chemical and doesn't contain any sulphur. Therefore, the more ethanol is put in the gasoline, just by simple dilution factor there is less sulphur.

It has been argued that agricultural activity may increase noxins, particularly NO₂, somewhat. There's a lot of ongoing research into this. We believe, in the system of agriculture, that if we increase the demand for corn, we're probably going to replace the production of another crop with corn to meet that demand, and a lot of those other crops also produce nitrous oxide. So we could really see scenarios where you have a reduction in nitrous oxide and not an increase.

All oxygenates such as ethanol produce aldehydes, mostly acetaldehyde and some formaldehyde. The Royal Society of Canada has determined that aldehydes, particularly from ethanol production, are effectively removed by the catalytic converter in the oxidation part of it. So the net effect of using ethanol fuels is that you're going to get an improvement in air quality, a reduction in smog formation and a reduction in toxicity as well.

In climate change, Canada committed itself at the Earth Summit to the so-called Kyoto agreement, where we're going to reduce our CO₂ level to I believe 6% below the 1990 levels. Just as an aside, I saw some predictions that the business-as-usual scenario by the year 2012, I believe, will be 27% above the 1990 levels, let alone anything to reduce that. So we've got a significant amount of work to do if we're going to have much of an impact on that.

Carbon dioxide is one of the key components, and one of the largest contributors of carbon dioxide is the burning of fossil fuels. Because ethanol is a renewable fuel and the CO₂ that's burned in the combustion of ethanol is reabsorbed by the plant the next year, even though we use some fossil fuels in the production of the corn and the production of the ethanol, we still have a significantly positive benefit from using ethanol. We believe that with a 10% ethanol blend you can reduce carbon dioxide by between 6% and 10%. With a 10% blend there's about a 2.5% to 3% reduction in net greenhouse gases and a further contribution to reducing global warming by reducing fossil fuel use by 3.3% to 3.9%.

I'd just like to mention that these are the most recent analyses we have, but the most important thing is that the trends have been positive in that area, both in the production of corn, where we've managed to reduce our

energy use to grow a bushel of corn, and in the modern ethanol plants, which have significantly reduced the energy required to turn that corn into ethanol.

From the rural economy point of view, it's an important market for grain corn, and that can include a market for damaged and off-grade corn which appears in the market from time to time. Nobody grows that quality of corn on purpose, but it's certainly in the marketplace from time to time and that's a very good outlet for it, into the fuel ethanol industry. There are obviously opportunities for other crops such as wheat, the starch crops, and also cellulosic materials. There's a lot of talk now and a lot of interest and study and using what we call lignicellulose products with different enzymes to break them down to produce fuel ethanol from. This also expands our base products to make significant amounts of ethanol.

From a Canadian energy self-sufficiency point of view, even though we produce a lot of fossil fuels from heavy oil, most of that oil goes south and we're still importing significant amounts of offshore oil. We believe that an indigenous supply of fuel ethanol can reduce our dependence on foreign oil imports.

Finally, I would like to point out that ethanol is an important contributor to the environment, energy self-sufficiency and rural economic growth. It's an easy way for Canada and Canadians to contribute to a lot of the environmental issues we're faced with today. The emphasis of Bill 34 on clean air is very important to the Canadian Renewable Fuels Association. Ethanol is an excellent way to meet requirements for a more rigorous clean air policy. The support of the Ontario government has been greatly appreciated and is crucial to the expansion of the industry in Ontario and Canada.

I would like to take this opportunity to again thank the members, some of whom aren't here and aren't even in politics any more, who helped us to get to this point. We're certainly interested in furthering debate on fuel ethanol and its benefits. Thank you very much.

The Chair: Thank you very much, Mr Johnson. Regrettably, there's no time for questions, but thank you very much for bringing your organization's point of view forward to us today.

Mr Johnson: I wonder if I could correct one oversight. I would like to introduce Ellen Klupfel. She is our public information coordinator. She has just been newly hired by Renewable Fuels and her job is to expand information about fuel ethanol for the general public. She is available for any further information.

The Chair: Thanks again.

1610

CANADIAN PETROLEUM PRODUCTS INSTITUTE

The Chair: I now call representatives from the Canadian Petroleum Products Institute. Welcome to the committee.

Mr Bob Clapp: My name is Bob Clapp. I'm the vice-president of the Ontario division of the Canadian Petroleum Products Institute and have spent over 30 years in various aspects of the oil industry. Canadian Petroleum Products Institute represents companies engaged in the refining, distribution and marketing of refined petroleum products across Canada. In Ontario our membership includes Imperial Oil, Petro-Canada, Sunoco, Shell, Canadian Tire, Nova, Safety Kleen and Ultramar. We operate six refineries, over 150 bulk plants and somewhere in excess of 2,600 service stations. We employ over 120,000 people across the province and collect in excess of \$4 billion in taxes for provincial and federal governments.

I would add at this point that the CPPI have been engaged over the years in industry and voluntary initiatives. We were the first country to move out of lead. We led the charge. We reduced sulphur in distillate voluntarily, preceding a legislative response to that. Our industry has the cleanest water effluence in North America. We led the charge in the development of the MISA standards for the province. We have I think an exemplary record of voluntary approaches, leading, in many cases, because of the nature of the industry, to a regulatory backdrop.

First I'd like to talk generally about some principles and where we're coming from as an industry. When we sit back and look at the role of the government, we see that it is to set air quality standards. The role of the industry is to meet those standards through formulating their products or running their operations in the most efficient manner to meet those needs and to meet the needs of consumers.

I believe that this government has emphasized that through the recent regulatory reform initiative, the red tape review process and through the streamlining that has gone on in the last couple of years, and one that we strongly have supported. Basically it is identifying what the broad objectives are that industry needs to meet and getting out of the prescriptive remedies that are there. This bill has a bit of the prescriptive remedy aspect of it in mandating how we make our products.

With respect to the specific bill, CPPI member companies have used oxygenates and they're continuing to use various oxygenates in their products. The choice is a strategic, economic and environmental one. Each of them, as you will hear today, has their own reasons why they are or are not using the product. In Ontario, we have used ethanol and other oxygenates in our products. What the members oppose, however, is the concept of mandating oxygenates as a prescribed means of formulating gasoline and basically telling us how to make our products. We think we know best how to make the products and will meet the environmental standards that the government requires of us in terms of air quality.

Let me now talk about some very specific issues. I'm going to reference, as Jack has, the state of Minnesota. Jack spent a lot of time with them. I will use some of their references as well. Overall, environmentally when you look at ethanol and ethanol blends, both the US EPA and Environment Canada say that it's a wash between ethanol-

blended gasolines and gasolines as we see them being reformulated in time. Whether you're talking CO, benzene, smog or global warming, when you look at the picture totally on a life cycle basis, they're a wash.

Let me address a couple of the specifics that have been talked to today.

Lower emissions of carbon monoxide: Today, ambient levels in Ontario are well below provincial objectives. In fact, they've decreased by 36% between 1986 and 1995. The Minnesota auditor, when they looked at the Minnesota ethanol program, noted: "Most of the reduction in atmospheric CO in recent years is due to improved vehicle emission equipment. It is not clear that use of oxygenated gasoline can be linked to a significant reduction in CO. Scientists say that little or no reduction in ambient CO levels can be expected from the use of oxygenated fuels in newer vehicles with properly operating vehicle emissions systems."

The previous speaker talked to the benzene changes. Federal benzene regulations, which kick in in July of next year, will reduce benzene in Canadian gasoline to the lowest levels in the world. There'll be less than 1%, which represents on average an over 50% reduction in benzene levels. This certainly meets all objectives laid out by Environment Canada and your Ministry of the Environment. The remaining dilution of any benzene in tailpipe emissions from ethanol is an insignificant and very small part of that. The major part of benzene has been done.

We talk about smog. There are many elements of smog. I'll go back to the Minnesota auditor, who said, "The net environmental benefits of ethanol are minimal or non-existent in the summer," relating to the smog season. It's also been stated that ethanol needs to be properly blended into gasoline if it's to be truly effective. That's very important. You cannot just take ethanol and splash-blend it on top of regular gasoline. You lose any environmental benefit with respect to smog that there may be by doing that. In fact it makes it much worse, with much higher level emissions of volatile organic compounds.

The impact on jobs that Jack has mentioned: I'd only say with respect to the job aspect that claims of job creation really need to be treated with extreme caution as you go forward. The Minnesota people looked at a very comprehensive evaluation of the jobs. When they looked at the entire state, their job impacts ranged from a loss of 492 jobs to a gain of 583 jobs across the state. So that needs to be looked at very carefully. You also need to look at where ethanol may or may not come in the future. It may come from new plants in Canada if it were mandated; it may not. There's certainly plenty of capacity from large plants in the US.

I've heard several mentions of dependence on foreign oil. A couple of statements: Canada is not dependent on foreign oil today. We are a net exporter of oil and will be for as many years as we can see into the future. We have plenty of oil. The shipments to the US are a matter of geography in how that happens. A lot of the oil from western Canada goes into the midwestern US states because of proximity and oil is imported into eastern

Canada. But on a net, if you take our exports minus our imports, we're still net exporters of oil and will be for the foreseeable future.

Economics have not been talked about. I'd just like to point out a couple of things. Today ethanol is exempt from the federal excise tax of 10 cents per litre and the Ontario tax of 14.7 cents per litre. If you extend the mandate and put 2.7 weight percent oxygen equivalent, the ethanol requirement is about a billion litres per year. The cost to the Ontario taxpayer then is about \$250 million per year in order to go with this mandate; \$150 million is Ontario and the other \$100 million will be the federal government.

Minnesota, referred to again, has a 74-cent-per-gallon subsidy. That's equivalent to about 30 cents Canadian per litre. Statements coming out of the US federal General Accounting Office report: "The ethanol tax incentives allow ethanol to be priced to compete with substitute fuels. Without the incentives, ethanol fuel production would largely discontinue." Minnesota also reports, "The loss of the 54-cent federal subsidy would be catastrophic to the ethanol industry, and Minnesota ethanol production would decline to near zero."

Two final comments: When I'm talking about the corn market, I just have a couple of questions. If it is mandated, you'd need to stand back and look at the adverse affect this could have on other industry sectors that rely on corn as feedstock. There are many and I don't pretend to understand that, but you need to look at it holistically. You also have to ask the question, in terms of subsidy, what portion of that subsidy actually goes to the corn producer and how much of it actually stays in Canada if we start importing from the US to meet such a mandate? Thank you very much.

The Chair: Again, I'm afraid we have no time for questions. Thank you very much for the thoughtful presentation you've brought this afternoon.

1620

IMPERIAL OIL

The Chair: I call representatives from Imperial Oil. Good afternoon. Welcome. Please begin by introducing yourself for the Hansard record.

Mr Richard O'Farrell: My name is Richard O'Farrell. I am the manager of external relations at Imperial Oil's public affairs department. I thank you for allowing me, on behalf of Imperial Oil, to speak to Bill 34. My purpose this afternoon is to share with you some information which Imperial Oil believes deserves full consideration by the committee as it moves forward in deliberating this private member's bill.

I would like to clearly state at the outset that Imperial Oil is not opposed to the use of oxygenated fuels in gasoline. In fact, Imperial Oil currently uses one of the oxygenates, MTBE, in the production of some of its gasoline. What Imperial Oil is opposed to is the mandating of the use of oxygenates as a prescribed means of formulating gasoline. It is our belief that industry should meet the established government environmental standards in the

formulations of its product through the most efficient and cost-effective methods.

I'm going to progress fairly rapidly. You'll find many of these points very similar to what was articulated in the association brief, as our views are very similar.

In addition to the belief that we should formulate in the most efficient manner possible, we also do not believe that consumers should have to pay through higher taxes which are required to offset the revenue loss from the subsidies to make the oxygenate ethanol viable.

In the area of environmental considerations, in our review of current literature and our own studies, it is our view that the benefits from oxygenate ethanol are neutral at best. The possible benefits that have been described on many occasions here this afternoon are also outweighed by some of the negatives that were not mentioned, including looking at the production of ethanol through its full life cycle basis.

One possible benefit of ethanol-blended gasoline is the potential to reduce carbon monoxide emissions. However, that same benefit can be and is being derived through newer vehicles with properly operating vehicle emission systems. CO emissions are not a significant ambient air quality problem in Canada today. Emissions have dropped in the last two decades, primarily due to the improvement of vehicle emission controls.

As you know and heard earlier, in the state of Minnesota, which has the highest percentage of ethanol-blended gas in the United States, the state-legislated auto committee asked the state legislative audit office to look at the cost and benefit of the program designed to promote the production and use of ethanol in automotive fuels. The auditor's report was not nearly as positive about ethanol programs as the program supporters would have hoped. The report reiterated the fact that the majority of the reductions in carbon monoxide in recent years have more to do with the technology of cars than anything else. Specifically, the auditor's report stated that scientists say that no or little reduction in ambient carbon monoxide levels can be expected from the use of oxygenated fuels in newer vehicles with properly operating vehicle emission systems.

In addition, there's mention of the need for benzene reduction. I point out, as the CPPI did, that upcoming federal regulations governing benzene, which will come into effect on July 1, 1999, will be the most stringent comprehensive national benzene regulations anywhere in the world. Under these new regulations, Canadian gasoline will be limited to less than 1% or a 50% reduction in the Canadian average benzene content, thus satisfying all government objectives concerning tailpipe emissions of benzene. Any further effects of diluting gasoline with ethanol will be insignificant with regard to benzene levels and certainly not large enough to justify the use of ethanol in all Ontario gasoline.

Some proponents of ethanol claim that it is effective in combating summertime ozone formation which leads to smog. The emerging scientific consensus notes that ethanol is not particularly effective for ozone control. This

was also noted in the Minnesota auditor's report that concluded their analysis of the summertime use of ethanol by saying that the net environmental benefits of ethanol are minimal or non-existent in the summer.

With respect to job creation, again similar to what was stated in the CPPI report, we suggest one proceed with caution. The auditor's report estimates of the economic impact focused on the benefit of ethanol production while ignoring the cost of the state programs. The report estimated that in 1997 there would be a loss of anywhere from 492 jobs to a gain of 853 jobs. They really were unable to get more precise data, and the range is much less than what was suggested as the potential impacts or benefits from building ethanol plants in Ontario.

Construction and operating of any sort of plants such as ethanol is an advantage to the community in which it is located, but this localized effect is offset by the overall reduction in household spending, due to the costs of mandatory ethanol programs that are borne by all citizens.

If new plants are built, there is no guarantee they would be constructed in Canada and not in the United States. In addition, the creation of new ethanol plants could mean the closing of existing refining facilities.

In the area of import of foreign oil, displacement of foreign oil, again similar to the CPPI, Canada is a net exporter of oil, and ethanol would not impact in this area.

In the area of cost, throughout the fuel ethanol community it is broadly recognized and accepted that ethanol from corn is too costly to produce to be competitive with conventional fuels. Therefore, various governments employ heavy public subsidies such as tax relief, loan guarantees and outright capital grants in order to permit fuel ethanol to compete. Our federal government exempts fuel ethanol from the 10-cents-per-litre excise tax on gasoline. In Ontario, the provincial government further exempts fuel ethanol from the 14.7-cents-per-litre provincial road tax on gasoline. The net result for Ontario gasohol blenders is a total of 24.7 cents per litre for each litre of ethanol blended into gasoline.

Without going into detailed calculations, mandating the use of ethanol would cost the provincial government approximately \$150 million per year in lost road tax alone. The federal government would see a drop in existing tax revenue of \$100 million per year. Obviously, these tax shortfalls would have to be made up by increasing the tax burden on Ontario and other Canadian citizens by other means.

In summary, I would ask the members of the standing committee on resources development not to endorse the bill, based on the three broad areas I've presented today: The bill is environmentally neutral when one looks at the production of ethanol on a full life-cycle basis, consumers will eventually end up paying for the lost tax revenue, and the proposed legislation will not necessarily produce more jobs when all implications of the bill are considered and the benefits are weighed against the impacts on other industries.

The Chair: Colleagues, I'm going to ask your indulgence that I be as fair a Chair as possible. It will be

difficult given that we have a brief time period, but I think we have time for questions. Just one, and we'll do it from the government caucus, and we'll do a single question next from the Liberal caucus when there's time.

Mr Carroll: A quick question, sir. Sunoco has the federal environmental endorsement and Imperial Oil doesn't. Are you telling me that a gallon of your fuel burns every bit as cleanly as Sunoco's and that the federal environmental issue is just nothing?

Mr O'Farrell: I believe a gallon of our gasoline burns as cleanly as Sunoco's. I'm not sure of your reference to the federal government.

Mr Carroll: The environmental — Sunoco has the green label.

Mr O'Farrell: I'm not sure what the criteria are for the green label, but I don't think it necessarily means one burns cleaner than the other. It just means it meets certain standards that they've established. To be honest, I'm not familiar with the standards in detail, but they don't necessarily imply one is better than the other.

Mr Carroll: One other quick thing: You're going down to 1% benzene because it was mandated by the government. Had it not been mandated by the government, how soon would you guys have gotten down to 1% benzene?

Mr O'Farrell: That's rather speculative to say. I don't know. I think the point is that we worked with the government in reaching a regulation that meets the needs they have for environmental matters, and it was done in a way that we can live with and manage within our processes and do it in a cost-effective manner.

The Chair: On behalf of all the colleagues, I thank you for taking the time to come before us on this matter today.

1630

UPI INC

The Chair: I now call representatives from UPI please. Good afternoon and welcome. Please begin by introducing yourself for the Hansard record.

Mr Robert Sicard: Good afternoon, honourable members and ladies and gentlemen. My name is Bob Sicard. I am an oil industry veteran, believe it or not, spanning three decades.

My work experience includes senior positions with organizations such as BP Oil Ltd, Petro-Canada, MacEwen Petroleum Inc. and now UPI. My current position, which I've held since December of 1992, is that of president and CEO for UPI Inc.

UPI is a regional petroleum marketer and wholesaler with annual sales exceeding \$200 million. Our primary market is rural Ontario where we supply the Ontario co-operative system — farmers, homeowners and motorists — with a line of quality motor fuels and heating fuels.

My purpose in speaking to you today is really twofold: First and most important, as a citizen of this province and as a parent of two teenaged children, I am anxious to promote initiatives that will help preserve the environment for future generations, and second, as a marketer of petrol-

eum products with a mandate to supply the province's agricultural co-operative system, our company, UPI, supports initiatives that will benefit our customers and their communities.

Bill 34 would regulate the quality of gasoline in Ontario by requiring all gasoline sold to contain 2.7% oxygen by weight. The primary benefit of adding oxygen is that it will result in a fuel that burns cleaner than gasoline produced under current standards set by the Canadian General Standards Board.

Cleaner-burning fuels result in a reduction of carbon monoxide emissions. Carbon monoxide is a toxic gas that contributes to air pollution and is of particular concern during the winter months. Oxygenated gasolines promote a more complete combustion process, which in turn lowers CO emissions.

A number of different additives could be used to achieve the oxygenation level proposed by Bill 34. These would include ethanol, methanol, MTBE, ETBE, TAME, TAEE and some others. UPI supports the use of ethanol as an oxygenate. Ethanol, and more specifically, ethanol made from corn or grains grown in Ontario, presents many additional benefits when compared to other synthetic oxygenates mentioned.

Fuel ethanol produced from corn or grain is biologically renewable. Quite simply, this means that because the feedstock is grown in the field it, unlike petroleum, can be replenished. With the introduction of new farming practices such as precision farming over the past decade, average yields have been increasing. Demand for fuel ethanol provides a new market opportunity for Ontario corn and grains.

Fuel ethanol production results in a number of by-products which also provide additional market opportunities. Some examples of these by-products include flour, corn oil, corn meal, and corn grits. These are used in producing food for human consumption.

Fibretein: This product is used as a high-fibre and protein food additive. Corn gluten meal and corn gluten feed are used as high-protein animal feed additives. Amino acids are also used as animal feed additives. Dry distiller's grains or DDGs, perhaps the most widely used by-product, are animal feeds that are high in protein and energy. Carbon dioxide, otherwise known as CO₂, can be used as a refrigerant to carbonate beverages and as a rapid-growth agent for vegetable crops and greenhouses.

Along with the benefits to agriculture are the equally important spinoff economic benefits generated by increasing ethanol production. The new Commercial Alcohols production facility in Chatham is a prime example. The plant is able to produce 150 million litres of fuel ethanol annually. It also produces 127 tonnes of DDGs and 100,000 tonnes of compressed CO₂. Over 400 full-time direct and indirect jobs have been created, not to mention the 400 person-years that went into building the facility.

The annual economic impact for the region has been overwhelmingly positive: \$53 million in corn purchases, which is 15 million bushels; \$27 million in DDG and CO₂

by-product sales; \$14 million in supplies and services; and a \$2.5-million payroll. This represents a total annual economic impact of \$96.5 million.

Taking this example one step further, there are approximately 13 billion litres of gasoline sold in Ontario each year. If every litre sold contained 7.8% ethanol, more than one billion litres of ethanol would be required to satisfy that demand. One billion litres of ethanol production would require 100 million bushels of corn or be the equivalent to a production output of more than 6.5 times that of the Commercial Alcohols facility in Chatham.

UPI, the company I represent, has been a long-time proponent of the use of ethanol as an oxygen. In fact, UPI was the first oil company to successfully market ethanol-blended gasolines in Ontario, in large measure due to the support it received from organizations like the Canadian Renewable Fuels Association, Ontario corn producers and other special interest groups.

The development of an ethanol industry in Ontario also receives support from both the provincial and federal levels of government, who granted temporary tax relief in order to provide a window for production facilities like the one in Chatham to be constructed.

Since launching ethanol-blended gasolines on a province-wide basis in 1992, UPI has sold nearly 700 million litres of ethanol-blended gasolines to motorists and farms from Windsor to the Quebec border and throughout much of northern Ontario.

So strong has UPI's penetration been that for several years our company's sales in ethanol-blended gasolines far exceeded that of all other Canadian retailers combined. Simply put, increasing both the production and the use of ethanol benefits rural citizens of this province. It specifically benefits Ontario farmers by presenting a new market opportunity for their products and it also benefits local economies by creating jobs and other spinoff benefits. Thank you for your time.

The Chair: We have time for a question from the Liberal caucus.

Mr Pat Hoy (Essex-Kent): Thank you very much for your presentation this afternoon. As one who has grown corn and used ethanol-blended gasoline as a matter of choice, I'm pleased to hear everyone today.

You mentioned that the compliance with this bill might incur a plant six and half times that of the one in Chatham? Is that what you've stated?

Mr Sicard: To produce the ethanol required to blend one billion litres, you would require six and a half times the output.

Mr Hoy: Do you think that could be done by January 1, 2005?

Mr Sicard: I can't answer that. If you're asking me personally, no.

Mr Hoy: If it was mandatory and we didn't have the plants with the capacity to provide the product, we would have quite a difficulty, wouldn't we?

Mr Sicard: Again, I really can't answer that question, sir.

Mr Hoy: The government today introduced balanced-budget legislation. I don't know what it would say with regard to taxes that are currently exempted. I haven't looked at that. It was just tabled a few hours ago. It will be interesting to see what the bill would say on exempted taxes with regard to the fact that future governments wouldn't be able to raise taxes without some kind of criteria, that we also will have a look at as well.

I know a number of presentations have talked about the exempted portion of the cost of this particular fuel. There may be an impact from that bill as well with regard to exempted taxation. But you're reasonably confident that by January 1, 2005, the petroleum industry could comply?

Mr Sicard: I didn't say that. I'm fortunate, I'm not in the refining business. I'm a marketer. I buy the product refined and I sell it to our customers. I'm not impacted by the price of crude as a refiner. I'm impacted, obviously, on the street price. We're a regional marketer; we are not refiners. We are not involved in the upstream part of the business either.

The Chair: On that note, thank you very much. We appreciate your taking the time to come before us this afternoon. I am sure if colleagues have further questions, they will contact you.

1640

CANADIAN VEHICLE MANUFACTURERS' ASSOCIATION

The Chair: I now call representatives from the Canadian Vehicle Manufacturers' Association, please. Good afternoon and welcome. Please begin by introducing yourself for the Hansard record.

Mr Mark Nantais: Good afternoon. My name is Mark Nantais, and I am the president of the Canadian Vehicle Manufacturers' Association.

Mr Blake Smith: Blake Smith, director of environment, energy and vehicle safety for Ford.

Mr Keith Madill: Keith Madill. I'm manager of policy development with the Canadian Vehicle Manufacturers' Association.

Mr Nantais: Let me begin by saying that we're pleased to be here to address Bill 34. If you're not aware, the CVMA represents Chrysler, Ford, General Motors and Volvo Canada, as well as Freightliner and Navistar International Corp. We're going to tell you what the impacts would be on vehicle operation from our point of view.

We have reviewed the proposed bill and found its requirement for a minimum 2.7% oxygen content by weight somewhat problematic. A 2.7% oxygen-by-weight specification is the upper limit — I emphasize upper limit — for the use of ethers and aliphatic alcohols in gasoline for use in existing and planned vehicles. At the present time, conventional gasoline vehicles can operate on a maximum of 3.7% oxygen by weight of ethanol; that essentially equates to about a 10% by volume level. But other fuel characteristics, such as volatility range,

including vapour pressure, detergency and corrosion properties, just to name a few, must also be addressed and, in our view, mandated to make it compatible. Conventional gasoline vehicles in Ontario and in North America can function with oxygen levels less than the following limits for specific oxygenates: ethanol at 3.7%; tertiary butyl alcohol at 3.5%; methyl tertiary butyl ether at 2.7%; other aliphatic alcohol and ethers, excluding methanol, at 2.7%.

In all of the above cases, there are a number of additional fuel characteristics similar to those outlined for ethanol which have to be addressed and mandated to make the fuels compatible for use in conventional fuels. The use of fuels with any greater amount of oxygen by weight requires vehicles which are specifically designed for that purpose. Already there are a limited number of dedicated vehicles presently in use in Ontario which are designed to operate with ethanol at that 3.7% limit. Those are what we call E85 vehicles. Vehicles operated on amounts of oxygenate in the fuel in excess of limits mentioned will cause Ontario drivers to have significant problems relating to the operation of their vehicles. These problems could include difficulties in starting vehicles, stalling and the associated driver and passenger safety issues, increases in vehicle emissions and long-term durability issues, along with potential fuel system leakages and some increased fuel consumption.

The issue of identifying and proposing fuel characteristic requirements is very complicated. Vehicle manufacturers would be pleased to assist the Ontario government in identifying the requirements to address this issue on a broader national approach. To address this complicated issue, vehicle manufacturers from around the world are finalizing the worldwide fuel charter. The purpose of this charter is to set out the key fuel requirements which are required to maximize the environmental and other performance requirements of vehicles.

Members of the Canadian Vehicle Manufacturers' Association applaud the Ontario government for their understanding that changes to fuel quality are necessary to maximize the emissions performance of vehicles. However, our members cannot support the passage of the bill in its current form. The CVMA would once again caution the government that passage of this bill has the potential to have negative impacts on vehicle operation in the province and the environment, which is equally important for the satisfaction of all motorists who will incur problems in the operation and perhaps the maintenance of their vehicles.

Instead of mandating the minimum oxygen content of fuels, we encourage the government of Ontario to actively work with the federal government to develop a national standard which deals with fuel quality requirements in a more holistic fashion. If developed, this should harmonize with the introduction of the vehicle; that is, introduce them when the vehicle technology hits the marketplace. This could ensure that customers can maximize the emission reductions from their vehicles by providing them with the fuel quality that is required for the designed operation of the emission control hardware and vehicle performance.

This is the vehicle hardware that Ontario drivers have already purchased and will continue to purchase in the future. They are entitled to the full environmental benefits.

The Chair: Thank you very much. I believe we have time for questions from each caucus. We will begin with the NDP caucus. No, you're entitled to a longer time period —

Mr David Christopherson (Hamilton Centre): That's right, yes.

The Chair: — so we'll start with the government again. I apologize.

Mr John Hastings (Etobicoke-Rexdale): I'm very interested in what would be the acceptable standard or standards if they were incorporated in a national, holistic way into Mr Carroll's bill.

Mr Nantais: Our view is that we should, first off, pursue a national standard which is consistent across the country. We've said to the federal government now on several occasions that we would like to see them draw up a national clean fuel strategy for Canada which looks at, as I said, fuels in a more holistic fashion. We've suggested that the starting point for those discussions be the worldwide fuel strategy that I've mentioned. That strategy is this document here, which was opened for comment in September and should be reissued in final form by the end of this month. We're saying here that the 2.7% by weight minimum level is actually already at the maximum level our vehicles can tolerate.

Mr Hoy: Thank you for your presentation. I'm reading from a press publication from June 26 of this year. "Minnesota's Ethanol Commission says blended gas makes cars run cleaner, doesn't damage car engines or foul fuel injectors and never requires gas-line antifreeze in the cold weather." Did I hear you say that ethanol may be a problem with some vehicles or is it just if it exceeds the requirement of this bill?

Mr Nantais: Virtually all vehicle owner's manuals that I'm aware of, from all vehicle manufacturers, specify a maximum of 10% ethanol by volume. Once that level is exceeded, then they are very concerned about potential problems with drivability and durability of the fuel system and delivery system. So, beyond that level, we are concerned.

Mr Hoy: It's simply beyond that?

Mr Nantais: Yes.

Mr Christopherson: Thank you for your presentation, Mr Nantais. I just want to follow a similar line of thought. Minnesota is being held out as the example. Am I understanding correctly that you're saying using that as a comparison isn't accurate because they are under the 10%?

Mr Nantais: I would say, if I'm understanding you correctly, that if you're below the 10%, there should not be a problem.

Mr Christopherson: I don't know enough about Minnesota's situation. Where are they in terms of that percentage?

Mr Nantais: That's a good question.

Mr Carroll: It's 2.7%. That's 7.8% ethanol by volume, so it's well under 10.

Mr Nantais: In the list of maximums I've mentioned here, I specifically have said ethanol at 3.7%, which would approach the 10% by volume level.

Mr Christopherson: I'm still having trouble understanding. Let me go back to the basics here. Minnesota is being held out as an example of a jurisdiction that has taken the steps you're concerned about, and they're getting rave reviews, certainly from some quarters, although others are suggesting that it's not certain yet. Can you tell us how we're different from that? Why would our drivers and car owners in Ontario have difficulties that citizens and car owners in Minnesota didn't face?

Mr Nantais: Assuming that the Minnesota level is a maximum level, as has been suggested at 2.7, that comes below the 10% by volume which we have said is acceptable in our owner's manuals. So, there should not be a problem, and we would be on an equivalent basis here in Ontario.

Mr Christopherson: If I can, a question to Mr Carroll: Is there any other jurisdiction that takes us into the area you're taking about here?

1650

Mr Carroll: Our standards are exactly the same as Minnesota's, 2.7%, which is 7.8% by volume when it comes to ethanol. It's well under the 10% volume. Ours is modelled very much after Minnesota's.

Mr Christopherson: The question, then, is valid, to the extent that if Minnesota car owners didn't have that problem, what problems are Ontarians going to face that Minnesotans didn't?

Mr Nantais: It comes down to whether the 2.7% is a minimum, which means that you could go much higher than 2.7%. In this case, it would have to be ethanol. We've said 3.7%, or 10%, in our manuals. It's a question of where you set the minimum or maximum.

Mr Christopherson: Right. But I'm hearing from the proponent of the bill that we're OK, we're in the same world that Minnesota's in. Let me just ask, for the sake of argument, if that were true, are there other concerns that Ontarians would have that Minnesotans wouldn't face?

Mr Nantais: That would raise the other question of whether some adjustments I've mentioned to the other fuels' attributes have also been made.

Mr Christopherson: But it would seem that they made those adjustments and it's working there. What I'm trying to find out is, what are the problems we would have that they don't, given that they've already broken the ground?

The Chair: In the interests of fairness, I have to interject. I'm sorry. That's something we'll have to think about. I'm sure colleagues are going to discuss that among themselves and perhaps will contact you for further reference there. Thank you for coming before us this afternoon. I appreciate it.

ONTARIO MEDICAL ASSOCIATION

The Chair: I now call representatives from the Ontario Medical Association, please. Good afternoon and welcome. Please begin by introducing yourself for the Hansard record.

Dr Ted Boadway: My name is Dr Ted Boadway. I'm the director of health policy for the Ontario Medical Association. I welcome this opportunity to present to you this afternoon. I've presented to this committee before and presented a great deal of the information, so I won't reiterate it.

In May of this year, the Ontario Medical Association produced a document entitled Health Effects of Ground-level Ozone, Acid Aerosols and Particulate Matter. I presented, as I say, on this very document to you before.

The Chair: On a point of information for you, sir, I think probably only Dr Galt and maybe Mr Hastings were members of the committee at that time. The committee members do alternate, depending on the bill before us.

Dr Boadway: Thank you.

We were very pleased when shortly thereafter a scientific peer review journal published our article, to give it that level of credibility, unchanged, as we had originally written it. In that paper, we point out that the incidence of these particular pollutants in our environment is a public health disaster. Whatever may have been said about the standards that exist today, it is the standards that exist today that have resulted in the public health disaster we are now having from these particulates in our community. The people of Ontario are suffering from this at the present time. It is not only the old; it's the young, it's those sick from illnesses and it is everyone who is affected by this. In fact, each and every one of you has been affected by this in your lungs this summer, particularly if you were in Toronto. But it was also true if you went away on a vacation and were in holiday places; it's also true if you sent your kids to camp, because this pall of pollution covers all of southern Ontario.

Carbon monoxide is a part of that mix. There are other volatile organic chemicals which come out of cars and many other sources, of course, but today we're just talking about gasoline fuels. Our present environmental standards have been inadequate and have allowed this to come forward. You, this summer, would have had a decrease of lung function, which you were insensible to and cannot measure for yourself, of anywhere between 6% and 10%. That's as a normal human being without any illness, no illness existing in you.

We believe there is no magic cure to this. In our recommendations, we list a great variety of recommendations for each particular cause and source of a pollutant. We believe this has to be approached bit by bit. There is no magic bullet which will solve this.

There may be good and sufficient environmental or economic development reasons for the passage of this bill, but we believe health considerations should be primary among those considerations. As we have been talking to other communities where this particular form of oxygena-

tion has been brought in, we have been able to discover that in California oxygenated fuel programs were responsible for approximately a 5% to 10% reduction in mean ambient carbon monoxide concentrations.

Before I came this afternoon, I checked with colleagues I know in Alaska, since they've had their oxygenated fuel program brought in — now with ethanol; before with MTBE — and they too have experienced a decrease in carbon monoxide. It is true that the carbon monoxide decreases are frequently due to modern, improved vehicular technology. However, we have a lot of old vehicles on the road, and our new vehicles do degrade. These are helped by these particular ethanol additives.

However, it is not up to us to recommend to you that this is a measure that should be taken in and of itself to be sufficient to increase the health of the population. But if you've come to the conclusion that this will decrease levels of CO in the environment, levels of volatile organic chemicals in the environment — and our preliminary recommendation is that it will — then we believe, since we know you are legislators who are concerned about the health of the people of Ontario, you should take action in this regard.

The Ontario Medical Association supports initiatives by this government, by the Legislature as a whole, which will result in improvements of the environment and a decrease of smog. It's a critical issue for the people of Ontario, and we hope you will take action in this regard.

The Chair: You've given us lots of time for questions. We'll begin with the Liberal caucus.

Mr Hoy: We had a presentation earlier that talked about emissions and the fact that ethanol would indeed be a cleaner fuel, first of all, and actually answer the question that you have on carbon dioxide. Would you not be adamant that we should do something about clean air and look at ethanol as an alternative to getting to that result, cleaner air in Ontario?

Dr Boadway: Absolutely.

Mr Hoy: The government and we in opposition have always seen ethanol fuels as environmentally friendly, and we concur with you that anything we can do to provide clean air for our citizens would be of benefit. The questions that are being asked today by all members here are about the best way to arrive at that result you're looking for, in particular around some of the questions of taxation. We've talked about compliance, whether we can meet that goal by 2005, whether it should be mandatory or not.

Knowing the marketplace, as you must as a consumer of other products, and how other companies will move to something that is selling well in the marketplace, do you have an opinion as to whether this should be mandatory or just given to the marketplace to determine if this is a clean-air fuel and have them move to that market situation, or do you think this requires mandatory legislation?

Dr Boadway: Well, sir, when you talk about manipulating the marketplace, you are talking to one of the world's ranking non-experts, so I don't think my

advice would be worth much to you. I'm a health expert, and I try to stick to my knitting, quite frankly.

Mr Christopherson: Thank you, Doctor, I appreciate your contribution. In these kinds of deliberations, as parliamentarians it's very helpful for us to get experts in the field of health who are prepared to go on the record and talk about these things as public health issues, because, as you know, oftentimes the economic arguments about taking mandatory measures are often very persuasive, particularly in, shall we say, rocky economic times.

I want to make sure I heard correctly. Did you say that over the last summer most Ontarians, particularly those in southern Ontario, would have lost 6% to 10% of their lung function?

Dr Boadway: Yes, that's correct. When a person has an ozone exposure, they have an increase in swelling, in the mucus production inside their airways, and that affects the very smallest airways in their lungs. The result of that is a narrowing of the smallest passageways, which you count on to deliver oxygen to your alveoli for oxygen exchange. You can actually measure how much ozone increase will result in how much decrease in size. They go like this: They cross each other. This summer, Toronto had ozone exceedances of greater than 120 parts per million on six days. That's sufficient to result in a 10% decrease in lung function.

1700

Mr Christopherson: Is that a permanent decrease?

Dr Boadway: No. It's reversible very quickly.

Mr Christopherson: But the cumulative effect, I gather, over years and years could lead to some permanent damage, or does it always come back?

Dr Boadway: No, it has no cumulative effect as far as we can tell. That's still open to study. It has an acute effect on the individual at that time. If you are a runner who pushes yourself to the maximum on an individual day, you will notice it. But quite frankly, if you're like me, who doesn't do that on many given days — I won't notice the difference. If I'm someone who is asthmatic, or a cardiac patient or a chronic bronchitic, I will notice the effect on that day. In fact, that could push me into a serious condition.

We sent you a copy of our report when it was published. You may not have one, but we outlined that in detail in our report.

Mr Carroll: Thanks, Dr Boadway. I appreciate you coming forward. The Motor Vehicle Manufacturers' Association suggested we wait for the feds, that we try to get them to do something. Everybody knows that the Golden Horseshoe or the greater Toronto area has by far the biggest concentration of this problem, so we think waiting for the feds is folly.

The CPPI came forward and told us, "Don't tell us how to do things; just leave it up to us and we'll get the job done." You explained the health impacts of us not getting the job done. We know the technology exists. We know that Sunoco and UPI sell gasolines that are blended up to 10% with ethanol and we know that the federal gov-

ernment has said they are environmentally more friendly. That technology exists, yet it hasn't been expanded. Do you have confidence that the petroleum industry will do what it has to do to clean up the environment if we as legislators don't, as Mr MacKenzie said, put a gun to their head?

Dr Boadway: Personally, after the experiences I've had with the feds, I don't have, in many areas, a lot of confidence the feds will do it. I think it's a recipe for waiting and doing nothing perhaps, from time to time. I'm also concerned if you say, "Set up the ambient standards and let us meet them." The ambient standards are inadequate at the present time. That's why we have the problem we have.

Secondly, if we take the sulphur in fuels standard as an example, the attitude of the petroleum industry was, "It's not our problem." They need to stand up to it and measure up to it and say, "It is our problem," and then become part of the solution to the problem. In this one, too, they duck and say: "Ozone isn't our problem; it's somebody else's problem. Therefore, we don't have to change what we do." That won't help us a bit. Everybody who contributes to it has to do what they can, and that's whether we're dealing with this problem or other problems.

I'm afraid if you leave it a huge open book, everybody will say, "It's not my problem." It's the tragedy of the commons.

The Chair: Thank you very much. On behalf of the members of the committee, I do appreciate you taking the time to come before us this afternoon with your advice.

SUNOCO INC

The Chair: I'm now calling on representatives from Sunoco. Good afternoon. Welcome. Please begin by introducing yourself for the Hansard record.

Mr Warren MacLean: Good afternoon, ladies and gentlemen. My name is Warren MacLean. I represent Sunoco as vice-president, sales and supply. Sunoco is a subsidiary of Suncor Energy, a growing integrated energy company. In addition to a refinery in Sarnia, Sunoco has a network of more than 500 service stations. We manufacture, distribute and market transportation fuels, heating oils and petrochemicals, primarily in Ontario. Recently, we have entered into marketing natural gas to commercial and residential consumers in Ontario, and also have entered the heating, ventilation and air conditioning service business with the launch of the Sunoco Home Energy Dealer Network.

First of all, Sunoco is a member of the Canadian Petroleum Products Institute, and we endorse the basic position CPPI presented to you today. Specifically, we believe that the role of government is to set air quality standards and that the role of industry is to meet or exceed those standards in the most efficient, cost-effective manner. We do not support the mandating of specific fuel components.

Having said this, it is not my intent to repeat what you have already heard. The purpose of our presence here

today is, first, to ensure that during the debate around Bill 34 we reinforce that ethanol-blended gasolines provide high-performance transportation fuels; and secondly, having operated with ethanol-blended gasoline throughout the Sunoco-branded channel, we can share with you the benefit of our experience over the past year.

Sunoco has spent considerable time and resources in building a reputation of marketing high-performance gasolines. Our Ultra 94 premium gasoline has the highest octane available in Ontario. It was therefore imperative to us that as we entered the market with ethanol-blended gasolines, these products would not affect our performance relationship with our customers.

For 18 months prior to the launch of ethanol gasoline, Sunoco both performed laboratory testing to measure the impact on key parameters and did large-scale pilot tests to gauge customer reaction. Only after satisfying ourselves that ethanol-blended gasolines would meet our high performance standards did we embark on rolling the product out across our entire network.

We believe Sunoco is well positioned to differentiate our gasolines in the market, as well as take advantage of the attractive supply economics. Sunoco has a corporate commitment to support the development of alternative or non-conventional fuels, as evidenced by the introduction of methanol-blended gasoline in the 1980s, the marketing of propane as an automotive fuel and recently our participation in a pilot to fuel large trucks with natural gas. We viewed ethanol-blended gasoline as a logical extension of this commitment.

After having a full year of implementation behind us, we can say that the customer acceptance has been exceptional, but we have had to overcome some significant logistical barriers. Within Sunoco's sales orbit, we have created a proprietary distribution system due to the non-fungibility — meaning it doesn't mix with other gasolines — of our ethanol-blended gasolines. This required a significant capital investment to blend a low-volatility sub-octane blend stock produced at our Sarnia refinery with ethanol at each of our distribution terminals. This was necessary to ensure that we could meet all applicable quality specifications, including vapour pressure. I think earlier presenters talked about splash-blending of ethanol on conventional gasoline. That would cause an increase in the vapour pressure and an increase in the emissions relative to conventional gasoline.

In eastern Ontario, which is typically supplied from Quebec refineries, we have been forced to truck supply from our Toronto terminal. To date, the high cost of investment in terminal infrastructure and the lack of supply of blend stock have prevented us from increasing our delivery efficiency. We do not extensively market in northwestern Ontario, up around Thunder Bay, but you'd have a similar problem in that that area is supplied by a product from Alberta refineries. Again, you'd have a problem getting the appropriate blend stock.

In summary, although Sunoco is an active marketer of ethanol-blended gasolines in Ontario, we cannot support

the proposed legislation because we do not favour government mandating specific gasoline components.

Thank you for your time. I would be pleased to answer any questions.

The Chair: We begin with questions from the NDP caucus.

Mr Christopherson: Thank you for your presentation. Is there any intent at all on your part to question the findings and results of Dr Boadway and his colleagues in what he submitted before you?

Mr MacLean: I have not reviewed his submission in any detail, so it's very difficult for me to comment on that.

Mr Christopherson: There's a bigger example of a product where the health findings were questioned for decades, and I wondered whether we were into that same sort of scenario or whether you agreed with their findings.

Mr MacLean: I can't remember all the details of his submission. If you have a specific example you'd like me to talk to, I can do that.

Mr Christopherson: That's fair. I can see where you're going.

Let me shift over to the issue of what the oil industry would and wouldn't have done over the decades had there not been legislation forcing it to take certain measures. Mr MacKenzie outlines that clearly on page 18 of his document that was presented earlier, where he states, "The oil industry will not voluntarily accept this change nor have they voluntarily accepted any of the fundamental changes to gasoline, witness lead, MMT, sulphur in diesel, sulphur in gasoline etc." How do you respond to those kinds of charges?

1710

Mr MacLean: I can't speak for the total industry, but in my submission I highlighted that at Sunoco we've taken initiatives on the alternative fuels front for various reasons. We tried methanol in gasoline in the early 1980s, as I said, and found there was not a market for it and exited that. We've been using propane for automotive vehicles for an extended period of time. From our perspective, we pride ourselves on taking initiatives such as those to improve the offering we supply to our customers.

Mr Preston: I've got two questions. I'm going to put them all in one so I don't get cut off. If we're going to use 2.7% and 3.7% as the parameters so we don't go over and we get the maximum, we must name ethanol in the bill and we must name the way we put the ethanol in. If you use splash mixing, you could go up from 1% to 25% more emissions, from the literature I've seen. Is that about right? We have to name ethanol, as against anything else, if we're going to use those mixtures?

Mr MacLean: I think you're referring to the discussion with the car manufacturers. That's correct. If you're using other than ethanol and you go — I think the point there was you can't go above 2.7% with some of those other oxygenates. With ethanol you can go up to 3.7%. Prior to entering this market, we did some research on what the vehicle manufacturers would accept. Every single one of them will accept oxygenates up to 10% by

volume. With ethanol, that 10% max is 3.7% by weight. With some of the other oxygenates it's 2.7% by weight. They were concerned with the fact that — maybe I shouldn't speak for them either; I'm not speaking for anybody else. The 2% minimum was troublesome to them, because does that say you can go to 5% on MTBE, or something like that? That would cause them problems. I believe that's what they were getting at.

Mr Hoy: Thank you for your presentation. Do you provide ethanol in all of your fuels, or is it just specifically one fuel? When someone drives up to the pump, must they request ethanol, or do you use it in all your blends?

Mr MacLean: We use it in all Sunoco blended gasolines. At our particular facilities we provide each station with an 87 octane and a 94 octane, and then customers also have the choice of going to a 89.5 and a 92 blend as well. They will get ethanol in each one of those blends.

Mr Hoy: Excellent.

The petroleum institute was speaking first today, or at least at the beginning of our time. They mentioned some of their membership being Imperial Oil, Petro-Canada, Shell, Sunoco, Canadian Tire, Nova, Safety Kleen and Ultramar. Do you know if any of those companies also provide ethanol gasoline now, other than UPI — although they weren't mentioned here?

Mr MacLean: I'm not familiar with whether any of the other companies do. I don't believe they do in Ontario, but I can't say they don't in other parts of the country. As a matter of fact, I believe some of them do. From time to time, I believe, some of the other companies have used ethanol, have used MTBE in Ontario as well. At this point in time it would be tough for me to say one way or the other, whether they did or not.

Mr Hoy: When ethanol fuel was delivered to my farmstead, the company that delivered it — which was not represented here today — said we had to change the hose, we had to change the filter. It was recommended that the tank be tipped and on a different grade. Apparently ethanol fuel is a cleansing type of fuel as well and they were worried about this manner of things that I just mentioned. Is this something that would occur widespread, do you think, that people would have to change the hose that delivers the gas to the car, change filters, just because they went from regular gasoline to ethanol?

Mr MacLean: Prior to going into ethanol, we went through an extensive housekeeping process, I'll call it, and we continue to have very high standards at our stations that supply ethanol-blended gasolines. Ethanol is a polar solvent. It attracts water very quickly and that can cause problems in a vehicle. So you have to have an extremely clean system in order to deal with ethanol. It's part of the reason why we blend at our terminal locations instead of blending it right at the refinery and shipping by pipeline, because of picking up water or dirt within the pipeline system. That's why we're blending it at terminals.

The Chair: Thank you very much. On behalf of all the members of the committee, we appreciate your time this afternoon.

ONTARIO CORN PRODUCERS' ASSOCIATION

The Chair: I am now calling representatives from the Ontario Corn Producers' Association, please. Good afternoon, gentlemen. Welcome. Please begin by introducing yourselves for the Hansard record.

Mr Doug Eadie: I'm Doug Eadie. I'm a cash crop farmer and a director with the Ontario Corn Producers' Association, and I'm the chairman of the market development committee there.

Mr Terry Boland: My name is Terry Boland. I'm the director of communications and public affairs for the Ontario Corn Producers' Association.

Mr Eadie: Madam Chair, on behalf of the Ontario Corn Producers' Association, I would like to thank you and your colleagues on the standing committee on resources development for the opportunity to appear before you today to make a presentation on Bill 34, An Act to amend the Environmental Protection Act.

The Ontario Corn Producers' Association represents 21,000 corn farmers in Ontario. In 1998, corn producers harvested their largest crop ever, 237 million bushels, with an average yield of 128.8 bushels per acre. Corn is the largest crop produced in this province, with a value of over \$700 million and a value-added revenue of over \$1 billion.

Agriculture is the second-largest industrial producer in the province. Adding value to the Ontario corn crop through products such as ethanol results in a significant contribution to overall provincial economic performance. Ethanol production is a major contributor to the economic and social wellbeing of rural Ontario, creating new jobs and expanding rural development.

The legislation before us, presented by the member for Chatham-Kent, is about the environment and the addition of oxygenates to unleaded gasoline to improve Ontario's air quality. Renewable ethanol is an oxygenate and octane source and is already playing a role in reducing carbon monoxide, carbon dioxide, ground-level ozone and particulates. It can also displace other potentially dangerous components of gasoline, such as benzene. Oxygenates allow for a more complete burn of the fuel. Ethanol is already playing an important role in our fight against global warming through reductions in greenhouse gas emissions.

One important factor with the introduction of any new fuel is consumer confidence. Consumers want a fuel that is available and priced competitively. Low-level ethanol-blended fuels provide consumers with the ability to contribute to cleaner air without any modification of the vehicle and they have warranty coverage by all major automobile manufacturers. Therefore consumers can switch to straight unleaded gasoline if a retailer selling ethanol-blended or enhanced fuels is not nearby. Auto manufacturers are also producing flex-fuelled vehicles which can utilize straight unleaded gasoline or up to 85% ethanol.

Over the past six years since ethanol-blended fuels were introduced in Ontario by UPI Inc, the number of retail outlets selling ethanol blends has grown to 519 outlets, out of 929 nationally. This has been good news for farmers, rural development and the environment.

1720

As I mentioned, Ontario corn producers had the largest crop on record in 1998 and our strategy has been to develop domestic value-added markets. This has provided increased market security. The OCPA has been working on the development of the ethanol industry in Ontario for almost 20 years.

Canada's largest ethanol producer, whom you've already heard from today, is in Ontario, and Doug MacKenzie is representing them. Commercial Alcohols produces 150 million litres of ethanol per year, utilizing 15 million bushels of corn. An expected expansion to 300 million litres, combined with ethanol production in Tiverton, Ontario, and efforts by 2,000 eastern Ontario farmers to construct a 55-million-litre-per-year plant in Cornwall will mean a market for almost 38 million bushels of corn. The resulting bushel price and secure market helps to reduce the chances of financial farm program payouts.

Corn farmers work day in and day out on a free-market system. Lately that has not been as profitable, but it is the North American system of price-setting for corn. We would like to see our American and European counterparts reduce their support programs, but until that time we must maintain our safety nets, including market revenue insurance.

We would like to see ethanol accepted in a free market. This means that many of our friends in the oil industry would need to accept ethanol on its merits, its benefit for the environment, its value as an octane source; not as a negative, cutting into refining capacity, but as a market opportunity which will help them to meet global warming commitments. I would like to recognize UPI Inc, Sunoco, MacEwen Petroleum, Mr Gas and many others who have accepted ethanol's environmental and performance qualities. I know we can work together for a stronger Ontario economy and improved air quality.

What this committee must decide is whether that will happen. Do you require oxygenates in gasoline to help meet the government's environmental commitments or do you hope that change will take place on its own? That is a tough decision.

I'd like to take this opportunity to thank Jack Carroll, Pat Hoy, Howard Hampton and other members of the Legislature for their efforts over the years and most recently in helping the ethanol industry get off to a good start in Ontario.

Right now we'd like to address some issues that have arisen today, and I'll turn that over to Terry Boland.

Mr Boland: I thought we were going to have a pretty straightforward session today, but maybe it's time to put a little fire underneath things.

I was a little concerned and disappointed by the presentation by CPPI and Imperial Oil over some of their

comments regarding ethanol directly, not the bill. The suggestion that there are no environmental benefits or it's a wash is just not so. The EcoLogo in 1999 was presented by Environment Canada based on specific standards. Ethanol-blended fuels are the only fuels that received the EcoLogo licensing standard. Other fuels have not. The EPA has been very supportive of ethanol in the United States. So its suggestions that ethanol doesn't carry any environmental benefits is just hogwash.

Money going to farmers? Definitely. When you can sell 38 million bushels of corn, corn farmers will receive a higher price for a bushel of corn not just locally here where we have industrial plants or where we have an ethanol plant in Chatham but across the province. Therefore, all corn producers are benefiting from some of the advantages that are being produced by an ethanol industry in Ontario.

I want to also point out that this is money that's staying in Canada, it's staying in Ontario, unlike Imperial Oil where 70% of the profits are going back to the US. We're looking at domestic markets here. We're looking at money that's staying here. So the ethanol industry has been very positive for Ontario. Actually, Ontario is the leader of ethanol production in the country.

Those are just a couple of the comments I have to make, because when you sit back and listen to others who are criticizing a specific product or a specific industry while not addressing the bill, it does get us a little angry. We certainly feel that corn producers in this province have benefited remarkably, as well as rural communities, rural development in this province, from the ethanol industry.

The Chair: Have you completed or do you want to add a little more?

Mr Eadie: Yes. We can take questions now.

The Chair: We'll have time just for questions, and next up for questions only would be the NDP caucus.

Mr Christopherson: What do you ask of a group that makes a product that's renewable, that everybody eats, that every animal eats, that we make booze out of and that helps run our cars? Probably the biggest shock of my life would have been if you had walked in here and said, "We oppose this bill." For the life of me, I'm trying to rack my brain thinking of a question to ask you, but it all seems very straightforward from your perspective and I just can't come up with a question that would be of any value here. I'll offer the time to anybody who's got one.

The Chair: As Chair, I will give the question to Mr Hastings.

Mr Eadie: It's quite obvious we didn't plant one.

Mr Hastings: Thank you very much, gentlemen, for coming in. There seems to be some political will to do something here but the industry is against any kind of mandating, even though it's in Mr Carroll's bill, I believe.

Dr Boadway talks about the health care costs, and it's quite evident when you look at just the transportation industry, \$9 billion out of health care. How can we create some holistic thinking to loop you folks all together to do some kind of greater policy analysis so that you would all come back here and say, "We need to get at this on a

voluntary, free basis," instead of the government, whatever level, always specifying "You must do this by a certain time frame"?

There seem to be tons of economic benefits here, not only from the health care side if we could reduce — I'm an urban member and I see the costs from the hospital side. I've been there and I've talked to some of the allergists. All we're doing is hitting and missing on this thing. We need an econometric model of some sort that could create a win-win for everybody to drive this thing faster.

Mr Eadie: Looking at government in all areas, I would say you have to have a set of standards, whether it's today or in the future, by the year 2005 or whatever target date you want to set, and set some air quality standards, set some emission standards that are acceptable in this province, realizing that a lot of these fall into the national area of responsibility also.

The economic benefits are proven. We know that in rural Ontario. I know that as a cash crop farmer. Pat knows it. Anybody associated with the rural economy knows it. Then we'll get away from some of this nitpicking and using references out of outdated studies. We see them all the time and they still hit the press. That's where the government's role has to come in. You have to police that type of thing and react only to the most current and effectual research that's been going on. We've already heard from one person today who had some pretty up-to-date health concerns, I thought.

Mr Boland: I have to temper a little bit what I said earlier, primarily because we want to work together with the fuel industry, and so do you, I'm sure. You can set regulation, you can set components, but we've seen also where things like MMT federally was left out and forced back out of the situation. They're our customers. We would like to work with them. They are the ones who are going to be using the ethanol and blended fuel and I think there is a good market opportunity for the oil industry to utilize ethanol in their fuel.

The Chair: On that note, thank you very much. We appreciate you taking the time to come before the committee today.

SHELL CANADA

The Chair: I'm now calling on representatives from Shell Canada Products Ltd, please. Good afternoon and welcome. Please introduce yourself for the Hansard record before you begin.

Ms Lesley Taylor: I'm Lesley Taylor and I'm the public affairs manager for Ontario for Shell Canada. I'd like to thank you for the opportunity to speak here today about an issue that's very important to our industry. I must tell you, as one of the last presenters, I feel tremendous pressure to come up with a position that would solve the problem but I don't know if I'm going to be able to do that.

Shell Canada has investigated oxygenate use very thoroughly in terms of MTBE, ethanol, other alcohols and ethers. We do this as part of our marketing strategy.

1730

Our presentation will augment what has already been presented by CPPI. We will identify some key bullets but we won't be able to go into the details given the time constraints. We would be very pleased to make some experts in this field available to the committee if they should desire.

Shell Canada wants to go on record as clearly supporting the CPPI submission which was tabled, the key elements being:

From an environmental perspective, there are pros and cons to ethanol use. It should be considered neutral with respect to today's gasoline, which I think was stated today and is important.

Ethanol is dependent on a high level of subsidies. The economic effectiveness of these subsidies is highly questionable. I think we talked about \$250 million annually that the government was losing in taxes on ethanol subsidies. Mandatory oxygenates could have a highly negative impact for Ontario taxpayers and consumers, with virtually no improvement in air quality.

A mandate on oxygenates is opposite to the policy position gaining momentum in the USA. They are considering removing the oxygenate mandate for reformulated gasoline. We think this is perhaps one of the most important things that you must consider in your decision. We've heard people who are for, people who are against, but I think the United States has some extensive experience in this already and we need to take a good, hard look at what's happening there and what the trends are. I will be talking about that a little bit.

We support that it's the government's job to set the air quality standards and it is the companies' job to meet those standards. We think those are strategic business decisions that each company must make on its strengths and weaknesses. It's those kinds of decisions that allow a company to be competitive and to remain competitive in the marketplace. That is really how Ontario people, consumers, get the best benefit, when they are faced with choices and when they are faced with competitive, efficient companies that are offering those choices.

I'd like to talk a little bit about the experience, some of the current developments. Much of the discussion today has focused on ethanol as the predominant oxygenate, but the predominant oxygenate in use today is MTBE. We estimate that in the USA MTBE is used three times more than ethanol as a gasoline oxygenate.

Since the proposed bill is for mandatory oxygenates, the impact of MTBE use in Ontario is probably more relevant than ethanol.

California has removed the requirement for oxygenates in gasoline. As Peter Rooney, secretary for the California Environmental Protection Agency said, "We think California can have clean gasoline without MTBE or any other oxygenate."

California ENGOs and the oil industry in the USA are pressing the federal US EPA to reconsider their mandate of oxygenate in reformulated gasoline. That is currently under review. We should get the results of that.

A number of areas in the USA that were originally mandated to have oxygenated fuels have been designated as attainment areas and are no longer requiring wintertime addition of oxygenates.

Maine recently opted out of the US reformulated gasoline program because they did not want the mandatory oxygenates that come with reformulated gasoline. They are instead going with a low RVP gasoline. Other states, for example, New Hampshire, with sensitive groundwater supplies are considering similar moves.

The University of California has issued a report to the governor of California that the use of MTBE be phased out over the next six years. Groundwater contamination and toxicity concerns are the reasons cited for this recommendation. The report also recommended that ethanol not be considered as a widespread replacement for MTBE until its impact can be studied.

In terms of the environment, oxygenate use for reduction of vehicle carbon monoxide emission is quickly diminishing in importance. The Minnesota legislative auditor's report says:

"The net environment benefits of ethanol use are minimal or non-existent in the summer.

"While atmospheric carbon monoxide has declined dramatically over the last 25 years much of the decline occurred prior to the start of the oxygenated fuel program."

From the June 1998 air and waste management meeting in San Francisco: "Current results of the analysis of the 1996 inspection maintenance 240 data suggest a small increase in carbon monoxide emissions in real-world testing.... Probably the most disturbing results of this study (of real-world emissions) is the larger increase of NO_x emissions.... NO_x increase ranged from 15% to 37% with oxygenated fuels as determined by inspection maintenance 240 tests."

NO_x emissions are associated with smog and fine particulate, an issue that we've already talked about today as a problem in Ontario.

Although oxygenates can, through dilution, reduce benzene emissions, both ethanol and MTBE cause large increases in aldehyde emissions, including acetaldehyde and formaldehyde. Both are considered toxic by the US EPA.

Minnesota auditor's report quotes, "Ethanol's potential to contribute to the problem of atmospheric CO₂ is extremely limited." Depending on the power source and the by-product use, its impact ranges from plus 20% to minus 20% for greenhouse gases.

California recently studied the impact of MTBE versus ethanol and found lower CO emissions for ethanol but higher NO_x, hydrocarbon and toxic emissions. That's from the July 1998 CARB ethanol working group.

New study indicates ethanol use may have negative impact on groundwater quality. Indications are that

ethanol in gasoline tends to cause the gasoline hydrocarbon contamination to spread considerably farther from the spill source than for gasoline without ethanol. This issue merits further study.

As I said, overall Shell considers ethanol use to be environmentally neutral at best.

In terms of the economics, as per the note from the US General Office of Accounting on ethanol, without the incentives ethanol fuel production would largely discontinue. Again, we talked about \$250 million in lost revenue for the government.

If corn prices do increase as the result of ethanol production, the General Office of Accounting points out that the farmers who raise livestock would likely pay higher prices and consumers would pay higher prices for food as a result of ethanol use as a gasoline oxygenate.

The distribution cost, displaced production from refineries and higher unit costs would have negative impacts on the refining sector and that could impact jobs negatively. It's very important to consider the net job impact when looking at ethanol.

In California, replacement of MTBE with ethanol was considered the most expensive option. That's quoted from a report that is put out from the Ontario Ministry of Energy.

Numerous studies have pegged the fuel economy loss associated with ethanol use at 2.5% to 3.5%. This can vary quite significantly vehicle to vehicle. Ethanol can also have a marginally negative impact on vehicle drivability, as was discussed here today by the CVMA.

Ethanol, if consumed in large quantities, could probably be produced cheaper in the USA and other countries than in Ontario. In this case, Ontario tax dollars would be subsidizing an industry based outside Ontario or even Canada. I think this comes back to the basic laws of supply and demand. If there is a larger market for Ontario here, clearly farmers from across the border who have easy access to Ontario will be looking to bring their product into Ontario.

1740

In summary, Shell Canada's position is that from an economic or environmental perspective, there are pluses and minuses associated with ethanol addition to gasoline. There's no compelling reason to use or not use ethanol. Shell opposes the mandatory use of ethanol as an oxygenate. If a business case can support ethanol addition, refiners or marketers will use that. I think, again, it is up to the companies to decide how best they can meet the government-set standards of air quality.

The Chair: Regrettably, there is not time for questions. I know my colleagues are annoyed with that, but we do thank you for taking the time to bring your proposals and your suggestions before us.

INDEPENDENT RETAIL GASOLINE MARKETERS ASSOCIATION OF CANADA

The Chair: Our final presenter this afternoon is a representative from the Independent Retail Gasoline

Marketers Association of Canada. Welcome. Please begin by introducing yourself.

Mr Colin Robbins: My name is Colin Robbins. I am the president of Robbins fuels and I also represent the Independent Retail Gasoline Marketers Association of Canada.

To begin with, the retail marketers who I represent in Ontario certainly do support oxygenated fuel. We have a number of concerns specifically dealing with the specifications and logistics of moving blend stock and the finished product throughout the province to our members. When ethanol or any oxygenate is added to gasoline, generally speaking there is a Reid vapour pressure increase. Ethanol produces a Reid vapour pressure increase, and for that reason our association would like to see Ontario regulation 271/91 contain a waiver of 7 kpa so that any independent distributor in the province will be able to produce this product from any source outside the province, including Quebec, United States and Europe.

Currently, there's a tax exemption for ethanol. We would like to see that extended to minimize any price increases if this bill is mandated. Without the tax exemption, I'm sure there will be a substantial increase in the cost of the product.

Having said that, a separate fund should be set up for the small retailers in that a lot of ethanol or oxygenated gasoline is not compatible in small engines which are used in the recreation and tourist business, especially in the northern part of the province. They will have to install smaller tanks and provide a conventional fuel for the small engines. I've experienced a number of examples where engines have failed when ethanol was added to the gasoline, particularly two-stroke engines.

If this bill is mandated and we have oxygenates, the preferable choice obviously that everyone has been talking about here is ethanol. We feel that a special tax credit or special financing should be available to producers of ethanol in this province so that jobs are kept here instead of importing a lot of the product in from another jurisdiction.

That's about all I have to say.

The Chair: Time for questions. We begin, then, with the government caucus.

Mr Carroll: Thank you, sir. The comment about the tax thing: My case on the tax thing is that it's about one cent a litre at an 8% blend of ethanol. It's about a cent a litre with the tax in and with the tax out. I think that's what it would amount to.

I left my home in Chatham last night and gas was 54 cents a litre. At London on the highway it was 47 cents a litre. In Toronto it's 52 cents a litre. Crude oil is at its all-time low price. I don't see any relationship between what the price of gas is at the pump and what it costs to produce it, so surely a one-cent-a-litre change, up or down, because of the addition of an 8% blend of ethanol is not going to have any impact on the market, is it?

Mr Robbins: I feel it will, sir, yes. On our cost of product it will have a significant effect.

Mr Carroll: The same retailers are buying the product from the same source; 10 cents or eight cents different from 200 kilometres along the 401. What does the cost of the product have to do with the retail price of the product? I don't understand how the system even works, how a mere penny-a-litre change because of the tax on an 8% blend of ethanol would have any impact on the marketplace. There must be some other factors that impact the marketplace rather than a penny a litre as far as an 8% blend of ethanol is concerned.

Mr Robbins: I think the position our organization would take is that the tax-exempt portion of the ethanol should remain in place. If that is not going to remain in place, I think you'll see more like a two-and-a-half-cent-a-litre increase in the cost of the product.

Mr Carroll: At an 8% blend?

Mr Robbins: Yes — in a 10% blend. Roughly 24.7 cents a litre; 10% of that is 2.47 cents, not a penny.

The Chair: I'm going to move on to Mr Hoy.

Mr Hoy: Thank you for your presentation. This amends the motor vehicles part of the Environmental Protection Act. It's amending that. Through the discussions we've had today — we've had maybe too short a time — but I would hope that those persons who have antique vehicles and choose not to use ethanol would be able to find a fuel that they could use. I know there was consideration about that some time ago in another situation. There are people who have a number of antique vehicles.

You talked about small engines. Are we talking about —

Mr Robbins: Chainsaws, older snowmobiles, small recreational vehicles, outboard motors.

Mr Hoy: All-terrain vehicles?

Mr Robbins: All-terrain vehicles to some extent, yes, sir.

Mr Hoy: There would need to be a pool of gasoline available for those users that did not have ethanol.

Mr Robbins: It would be recommended, yes.

Mr Hoy: Do you know what share of the market they have in the industry at all?

Mr Robbins: No, I would not have that information.

Mr Hoy: You talked about credits to the producer etc. Are you in favour of the mandatory aspect of this? I must have missed whether you said yes or no, that you did or did not like the mandatory aspect.

Mr Robbins: Yes.

Mr Hoy: You favour it?

Mr Robbins: Yes.

Mr Hoy: Have you discussed the impact of this bill with the ministers of energy and the environment?

Mr Robbins: Not as yet, sir.

Mr Hoy: Today we were talking about the cost of gasoline etc. Earlier this morning I found that on the Chicago market the May futures for corn in US dollars was \$2.30. I've never tracked it myself, the fluctuation in corn prices over time with the fluctuation in gasoline prices over time, but I think a lot of farmers today would tell you that US\$2.30 — and I'm talking about a May

future — is very low. That too, as an input into the creation of ethanol, plays a large part in the production. I just wanted to mention that to you. As you were talking about tax exemptions, I did want to put on the record that the current price of corn to the primary producer, that being the farmer, is at a very low rate.

Mr Robbins: Yes, as crude oil prices are.

1750

Mr Christopherson: Thank you, Mr Robbins, for your presentation. Point 1 on your handout says, "There must be a 7 kpa waiver for Reid vapour pressure for both Ontario regulation 271/91 and the Canadian General Standards Board." Can you break that down for me into plainer language as to what that means?

Mr Robbins: Currently, the Ontario regulation regulates the maximum Reid vapour pressure of gas —

Mr Christopherson: Sorry. What's a "Reid vapour pressure?"

Mr Robbins: "Reid vapour pressure" is defined as the dry vapour pressure equivalent of the total vapour pressure of the product at 100 degrees Fahrenheit. It's a technical term.

Mr Christopherson: It sure sounds like it.

Mr Robbins: When you add ethanol, you experience an increase in Reid vapour pressure. How much you add determines how much vapour pressure will increase.

Mr Christopherson: How does that affect then the issue of importing petroleum from Quebec, the United States and Europe?

Mr Robbins: Currently the other jurisdictions that we would import product from would have the same Reid vapour pressure regulation or limits that we have. I assume that ethanol-blended gasoline will not be available in these jurisdictions if we go ahead with this bill. For one of our members to bring in gasoline from another jurisdiction for competitive reasons, economic reasons or whatever — they would be unable to do that to meet the Reid vapour pressure requirement.

Mr Christopherson: If I can go back again to Mr MacKenzie's most helpful presentation, we see that Minnesota is already there, as has come up earlier, and California's looking at it. Are you telling me that Minnesota can't use any of the petroleum produced in the United States?

Mr Robbins: To my knowledge, they have a waiver.

Mr Christopherson: They have a waiver. Is this an environmental issue? Is it an economic issue?

Mr Robbins: It's an environmental issue.

Mr Christopherson: How does this Reid vapour pressure affect the environment?

Mr Robbins: It's basically a measure of the volatile organic compounds in the gasoline, which recently has certainly come under scrutiny and Reid vapour pressures have been regulated lower in all jurisdictions.

Mr Christopherson: Does it add something to the environment that's bad? Is that what it does?

Mr Robbins: Yes.

Mr Christopherson: It does. We would need to change it here to use this product? I'm having a great deal

of difficulty understanding exactly what you mean by all this. There's an environmental issue around the Reid vapour pressure as it's now set at 7 kpa. Is that what you're saying?

Mr Robbins: No, a 7 kpa increase.

The Chair: If I may interject, perhaps our research assistant could help us here.

Mr Christopherson: The researcher, yes, please.

Mr Lewis Yeager: The vapour pressure describes the volatility of the fuel and they've arbitrarily set a number to prevent the volatile organic compounds from escaping into the atmosphere when you're handling fuel, whatever. Alcohol is a different type of material than the other materials in gasoline, so it artificially changes the number without changing necessarily the volatility of the bad components in the fuel. What they want is a waiver so that it doesn't skew the volatility figures to artificially make them look worse than they are from the air quality protection standpoint.

Mr Christopherson: I see. Then would you expect that would be controversial at all from what you can imagine?

Mr Yeager: No, because that's not what the figure is intended to protect. I'm sure there are technical ways of meeting that requirement that would satisfy everybody.

Mr Christopherson: OK, that helps.

The Chair: Sorry. We are out of time.

Mr Doug Galt (Northumberland): Chair, if I may comment just for the record, we have just recently reduced

the level of volatility allowable for gasoline sold in the summertime from 72 kilopascals to 62 kilopascals to reduce its volatile organics coming off and creating the ozone problem. A very definitive step has been taken. What I'm recognizing here is, he's asking for it to go back up by seven to acknowledge the addition of the alcohol to the fuel.

Mr Christopherson: We have increase in volatility in our education and health care systems, but we won't get into that.

The Chair: No, we won't get into that.

May I thank you on behalf of all the members of the committee for taking the time to come before us this afternoon, and to compliment all of the presenters. As you could tell by the attentive demeanour of all colleagues around the table, this is a topic that everyone was very interested in and I thank you all for bringing your best advice to us.

Colleagues, that's our last presenter today. We will reconvene tomorrow afternoon to hear another bill. I would remind you, if you have amendments, it's suggested that they be presented before the committee on Wednesday two hours before we meet. They will be accepted during the clause-by-clause, but it's helpful if everyone has a chance to look at them ahead of time.

We are now adjourned for the day, to reconvene tomorrow.

The committee adjourned at 1756.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr Jack Carroll (Chatham-Kent PC)

Mr Harry Danford (Hastings-Peterborough PC)

Clerk / Greffier

Mr Viktor Kaczkowski

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service

CONTENTS

Monday 14 December 1998

| | |
|--|-------|
| Environmental Protection Amendment Act, 1998, Bill 34, <i>Mr Carroll</i> / Loi de 1998 modifiant la Loi sur la protection de l'environnement, projet de loi 34, <i>M. Carroll</i>..... | R-607 |
| Commercial Alcohols Inc | R-608 |
| Mr Doug MacKenzie | |
| Canadian Renewable Fuels Association | R-610 |
| Mr Jim Johnson | |
| Canadian Petroleum Products Institute..... | R-611 |
| Mr Bob Clapp | |
| Imperial Oil..... | R-612 |
| Mr Richard O'Farrell | |
| UPI Inc..... | R-614 |
| Mr Robert Sicard | |
| Canadian Vehicle Manufacturers' Association | R-615 |
| Mr Mark Nantais | |
| Mr Blake Smith | |
| Mr Keith Madill | |
| Ontario Medical Association..... | R-617 |
| Dr Ted Boadway | |
| Sunoco Inc..... | R-619 |
| Mr Warren MacLean | |
| Ontario Corn Producers' Association | R-621 |
| Mr Doug Eadie | |
| Mr Terry Boland | |
| Shell Canada | R-622 |
| Ms Lesley Taylor | |
| Independent Retail Gasoline Marketers Association of Canada..... | R-624 |
| Mr Colin Robbins | |

CADON
XC13
-576

Government
Publications



R-18

R-18

ISSN 1180-4378

Legislative Assembly of Ontario

Second Session, 36th Parliament

Assemblée législative de l'Ontario

Deuxième session, 36^e législature

Official Report of Debates (Hansard)

Tuesday 15 December 1998

Journal des débats (Hansard)

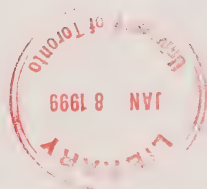
Mardi 15 décembre 1998

Standing committee on resources development

Professional Foresters Act, 1998

Comité permanent du développement des ressources

Loi de 1998 sur
les forestiers professionnels



Chair: Brenda Elliott
Clerk: Viktor Kaczkowski

Présidente : Brenda Elliott
Greffier : Viktor Kaczkowski

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Tuesday 15 December 1998

Mardi 15 décembre 1998

The committee met at 1534 in committee room 1.

PROFESSIONAL FORESTERS ACT, 1998

LOI DE 1998 SUR LES
FORESTIERS PROFESSIONNELS

Consideration of Bill 71, An Act respecting the regulation of the practice of Professional Forestry / Projet de loi 71, Loi concernant la réglementation de l'exercice de la profession de forestier.

The Chair (Mrs Brenda Elliott): Good afternoon, everyone. Welcome to the standing committee on resources development. We are here this afternoon for the purpose of attending to presentations on Bill 71, An Act respecting the regulation of the practice of Professional Forestry. We're going to begin our afternoon with a brief presentation from the sponsor of the bill, Mr Ramsay.

Mr David Ramsay (Timiskaming): I just want to take a few minutes first of all to thank the House leaders of all three parties for allowing this private member's initiative to get to this stage. That's really great, for a legislator to be able to bring a bill this far and now have some public comment on it. I'm very pleased with that.

I also want to say that, having listened to the second-reading speeches in the House, tomorrow when we do clause-by-clause I have prepared three amendments that I think will address concerns that both the ministry and some members in the House have expressed. I want members to know that. I'm certainly very open to any other concerns that might be expressed today in hearings and that might come up tomorrow.

The other thing is I understand our next presenter, Monte Hummel, representing the World Wildlife Fund Canada, will not be able to be here, but I believe all of you have a letter from him that says he continues to support this legislation.

That's all I have. I appreciate the committee's work on this and look forward to a good afternoon.

CANADIAN INSTITUTE OF FORESTRY

The Chair: As you have rightfully noted, the World Wildlife Fund Canada is unable to present today, but I understand we can begin with representatives from the Canadian Institute of Forestry. Please come forward and make yourself comfortable. You will have 15 minutes for

presentation time. You may use that as you see fit, but we always hope you'll leave time for questions. When you are ready to begin, please introduce yourself for the Hansard record. Welcome.

Mr Bruce Ferguson: It has been suggested of me that I keep this brief and to the point, so I will not take nearly the 15 minutes. If you do have any questions, please feel welcome.

Thank you for this opportunity of appearing before you on this worthwhile bill. The Canadian Institute of Forestry is a national organization of foresters and other forestry-related professionals, who would like to extend their support to the Ontario Professional Foresters Association in its quest to become a licensing institution.

My name is Bruce Ferguson. I'm a registered professional forester in Ontario since 1975 and I am currently first vice-president of the Canadian Institute of Forestry in Canada. Our head office is in Ottawa, on Slater Street.

I'll give you a brief description of the CIF, for those of you who are not familiar with it. The CIF-Institut forestier du Canada is a truly national organization, with 23 sections across Canada, including the Yukon. There are seven sections in Ontario. We have approximately 2,400 members in the institute, who are foresters, forest technicians, educators, scientists, researchers, and other forest-related professionals, such as forest ecologists and biologists, who are members as well. Many of the foresters are in fact registered professional foresters in their applicable provinces.

The CIF is a member of the Canadian Federation of Professional Foresters Associations and is currently secretariat to the Canadian Forestry Accreditation Board. We look after the criteria for six accredited bachelor of science-forestry programs in universities across Canada.

The mission of the institute is fourfold: To advance the stewardship of Canada's forest resources, to provide national leadership in forestry, to promote competency among our forestry professionals and to foster public awareness of not only Canadian but international forestry issues. On the international side, for instance, we have had joint ventures with CIDA, the Canadian International Development Agency, and we have hosted several forester delegations from around the world — in recent years a couple of delegations from China.

The CIF, like many national organizations of professionals, has a code of ethics. We undertake a bachelor

of science-forestry recognition program for those who are graduating each year. We hand out something on the order of 240 silver rings, which we wear normally on the small finger of our right hand, and at our national conference and annual general meeting we hand out achievement awards for a number of special purposes, such as forestry achievement, scientific achievement, international forestry achievement awards etc.

1540

We also contribute to other organizations, such as the professional foresters association and the national continuing education program. We have a voluntary credit system of staying current with emerging knowledge in forestry. We publish the Forestry Chronicle, which is the only national forestry journal in Canada. We currently have about 16 working groups working on various position papers on such topics as forest policy, forest health, fire and so on.

We are currently, as we were five years ago, a co-signatory to the National Forest Strategy, which was resigned and extended for five years last spring in Ottawa. We are committed to several elements of that strategic plan; we have devised our own strategic plan to assist in that capacity. We're also a member of the International Union of Societies of Foresters, of which we're the second-largest member, obviously behind the US.

To come to the point, the local section membership and national office have been very active over the years in support of the creation of professional foresters' associations across Canada in each of the provinces. The southern Ontario section members were very instrumental in the original bill preparation for the Ontario Professional Foresters Association in 1957 and, most recently, were successful in creating an RPF association in Newfoundland and are currently working with our members in Manitoba.

Clearly, as others have probably told you in previous hearings, professional forestry has matured from purely scientific management of our forests to one that requires long-term sustainability not only ecologically but socially and economically. Many of the forest management plans that you'll see prepared across Canada, and in Ontario in particular, include many aspects of wildlife habitat planning, future forest condition, protection of natural heritage areas and so on.

All of this must stand up to the rigours of public scrutiny. The public must receive the best professionalism we can deliver as foresters. The public must not only respect the advice of forestry professionals, but must be satisfied that the highest standards are in place and are enforced. Many of the Environics and Decima polls you've seen in the past about environmental issues indicate that the public is by and large very respectful of foresters' opinions, but at the same time those standards have to be in place and it must be known to the public that they're enforceable. The forests of Ontario are far too valuable to be left attended by anything less than the best of what society can expect. That's not only locally and nationally, but on the world stage we have this obligation.

Therefore, the executive and the members of the CIF across Canada wish to extend our support to the Ontario Professional Foresters Association in its request to become a stronger association of professionals through licensing privileges, because the public has the right to expect the highest standards from foresters in Ontario.

The Chair: We have three minutes for questions from each caucus. We'll begin with the government caucus.

Mr John Hastings (Etobicoke-Rexdale): Thank you, sir, for coming in and making your views known regarding this particular bill.

I have in front of me a letter from the president of the World Wildlife Fund, Mr Monte Hummel, in which he seems to be pretty vigorous in his contention that this particular bill doesn't satisfy his concerns or the World Wildlife Fund Canada's concerns about the intent of the bill to conserve forests. I quote one particular section, the summation:

"These may seem like very negative questions, but I assure you I'm asking them because I do strongly believe in licensing professional foresters. If the OPFA is going to do that, however, you must do it in a way that definitely includes the conservation of forests," and he goes on to elaborate on that point.

Would you agree with his submission at all, or would you fundamentally disagree or would you say the bill does satisfy the concerns of conserving forests?

Mr Ferguson: If I understand his comments, I would disagree. I would think the majority of foresters in Canada, especially those who are registered professional foresters, believe wholeheartedly in the conservation of forests. That's inclusive of not only managing the forests for social purposes, whether it's timber production, wildlife and whatnot, but also the protection of natural heritage areas, parks and so forth for scientific interests and so on.

Mr Hastings: You'd reassert that your primary function is forestry conservation as much as management.

Mr Ferguson: Definitely; very much so. Our definition of "conservation" is the wise management and use of forests.

Mr Hastings: Why do you think he would make such an assertion, sir? Because he notes also in his letter that he owns a privately managed forest operation.

Mr Ferguson: I really can't answer that. I don't know. I believe that the vast majority of Canadian foresters, even though we're few in number compared to some places, like the Americans and Scandinavian countries, on a unit area, are dedicated to Canadian forest conservation. I think we show world leadership in that regard. Any of the countries that we have had delegations from or spoken to have thought very highly of how forestry is practised in Canada.

At a recent annual meeting in British Columbia last year, we had about 17 countries represented at the national conference, and without a doubt every one of them commented on how they thought things were very well managed in Canada and they were surprised at the sophistication of our profession.

Mr Ramsay: I'm actually glad Mr Hastings brought that up, because this is one of the concerns that has been expressed. One of my amendments I think will go a long way to helping to satisfy that concern tomorrow, when I will talk about and add to the first purpose of the bill, that not only is the bill to promote and increase the knowledge, skill and proficiency of the members and things relating to forestry, but to do that, I'll add, "in order that the public interest may be served and protected."

As we've just heard from this presentation, the management of forestry has become a big public issue over the last 20 years, where it really wasn't that much before that. The vast majority of Ontarians and Canadians are very concerned, as they should be, about their forests. It's our heritage. It's a big identifier of who we are in this country. We are a forest nation for sure, and it's very important that the public have confidence that there are professionals in charge of making the decisions of how the forest should be managed. I think that's important.

Do you think this bill will help satisfy that public need and give them some confidence that it is professional foresters who are carrying out this work and that our forests are in good hands?

Mr Ferguson: I believe so. We have looked at this issue of going the licensing route a number of times over the years and have always been a supporter and advocate of it. It's very important that the public have the knowledge that there is an enforceable set of standards there, and peer review, that illustrates that we're dedicated and it is not our own self-interest or a company's self-interest or whatever, that we're providing the best current scientific advice on how to best manage and conserve our forests.

Ms Shelley Martel (Sudbury East): Thank you for coming in today. I'm just going to go to the last page and ask you a question about the comments you raised, which is that you're supporting the request, "to become a stronger association...through licensing...because the public has the right to expect the highest standards." You will know that already the Ontario association has what they have defined as a soft certification process. There are disciplinary measures in place already; there can be a removal of the certificate to practise. There are a number of educational initiatives that have always been in place to ensure people's expertise.

What is it about licensing itself as a mechanism that you believe will make the association stronger and, secondly, will give the public greater confidence in the work that professional foresters are doing?

1550

Mr Ferguson: I guess my answer right now would be the same for both. I would suggest that our perception as professional foresters to a lot of the public is that if you are licensed, then there's greater credibility that you are meeting standards and staying current with the current knowledge and science and social aspects of practising forestry in Canada or in Ontario.

I think the whole association will evolve in the next few years. This won't happen overnight. But at the same time,

I think there will be a growing interest in the public in what foresters are doing and how they're practising, whether they have the skills and knowledge and the support, whether it's the companies or government that are managing our forests.

The Chair: We appreciate you taking the time to come before us this afternoon and giving us your advice on this bill.

Mr Ferguson: Thank you. I appreciated the opportunity.

ONTARIO PROFESSIONAL FORESTERS' ASSOCIATION

The Chair: I now call representatives from the Ontario Professional Foresters' Association, please. Good afternoon. Welcome to the committee.

Mr Alec Denys: I'm pleased to address the standing committee on resources development today. I am Alec Denys, a registered professional forester and also the president of the Ontario Professional Foresters' Association.

Ontarians have recently come to realize that their forests are unable to meet the demands from all the users of the forest. We have witnessed this in the class environmental assessment for timber management in the late 1980s and currently with the Lands for Life initiative.

With this situation, we can expect to see a trend towards the introduction of politics into forest management as opposed to just pure science. By this, I mean the interested parties are using incomplete science and selective science to justify their interests.

What Ontario needs is a strong, self-governing professional forestry association to act as an honest broker with respect to forest science that's used in public debates. This is what we feel licensing can do. Also, once land use decisions are made, Ontario needs the highest standards of practice and sound forest management science to ensure that those forests are sustained.

Under the current legislation, the Ontario Professional Foresters' Association is constrained in strengthening professional standards and increasing the accountability of those who manage the forests. This speaks to the question that Shelley Martel had. Ontario needs to increase its reach so that all those practising the profession of forestry are subject to the same high standards. Currently, the association is a volunteer association.

Also, the threat of having a licence revoked is a significant incentive to remaining professionally responsible to both the public and the association, whereas the current decertification would not have that same threat and incentive. Licensing, with increased accountability and openness to the public, will increase a forester's sense of duty to the public interest. Also, it will provide foresters themselves with a strong foundation and a support structure, so that they can independently exercise their professional skill and judgment. Licensing provides the public with assurance of high standards and qualified

practitioners who are accountable for their results to the public.

In preparing this legislation, over 90 organizations were approached for comments. No organization was against the proposal, but we did hear and address the following concerns:

One of these concerns was to ensure that the public interest is the focus of licensing and not the gratification of the association or its members. This is clearly enunciated in the amendment that Mr Ramsay talked about and is in response to that; as well, it's throughout the legislation.

We heard that we shouldn't try to control or be seen to control the marketplace for forest workers. We've done this again in our scope of practice. We've limited it to where there is a definite need for professional skilled expertise that is available only from foresters. For instance, this legislation does not affect forest technicians, it does not affect ecologists from doing their work in the forest. It recognizes only where there is a special need for forestry expertise.

We heard that we were to be sensitive to those who are currently working and practising forestry where they would be affected by the scope of practice. We've introduced grandparenting guidelines to ensure that no one will be disrupted from the work they're currently doing. At the same time, under those grandparenting guidelines, those who are practising will have to practise according to the same high standards that we set for the professional foresters, for licensed foresters.

Last, we heard to keep the bureaucracy to a minimum, both for government and for business interests. Again, we've done this, working with legislative counsel to structure the act so that there are no regulations, that most of the business of the association will be conducted through the use of bylaws to keep the bureaucracy to a minimum.

In 1997, the association members voted 81% in favour of seeking licensing and accepted a doubling of their membership dues to support organizational change to incorporate the requirements of a licensing body. The association, over the past two years, has begun to prepare for this initiative.

The association has sought licensing legislation two times since I began my career as a registered professional forester some 20 years ago. Over that time period, I have seen the perception of our forests change from one of an abundant supply that could be sustained to the realization today that the demands for the use of the forest from competing interests exceed the supply.

The class environmental assessment for timber management wrestled with this concern and urged the strengthening of forester involvement in the management of the province's forests. In 1995, the Crown Forest Sustainability Act increased the role of registered professional foresters in the management of crown forests over that which was required under the old Crown Timber Act.

There is a significant risk of harm to the forest resource and hence the public interest if forestry is not practised based on sound science and high standards of practice.

It is in the public interest to restrict the practice of professional forestry to those who are bound by professional standards and are accountable both to their peers and to the public for their actions and results.

As society's values change, the profession must evolve. It is my belief that now there is a compelling public interest for the licensing of professional foresters.

Mr Ramsay: Thank you very much for your presentation. I think you really touched upon a lot of the areas that are very important for members to focus in on why this bill is timely now. Whether one likes it or not, the direction has been in this industry that the industry take more responsibility for its work and moving away from government supervision to more industry self-regulation.

I think with that there has been a concern in many parts of society and with many interest groups about the health and viability of the forests and how they're going to be managed, if you give more responsibility to the industry and do not have that government supervision. It seems to me that's why this bill is timely, to bring more accountability to the professional who is now being charged with the management of the forest. Would you agree with that, that that's a good reason why this should come forward now?

Mr Denys: Yes. Clearly, the licensing of professional foresters at this time, as I said, provides a support structure so that regardless of whether you're working for industry, the government or some other profession, you have a support structure within the association that will support you in making the right decisions, in sticking to sound forest principles as opposed to some other business interests that may become involved.

Also, your actions are going to be more open to the public. You're accountable to the public because the public can see exactly the type of decisions you're making, as well as the peers.

1600

Mr Ramsay: Could you elaborate a little more on what you mean by the support structure? In a sense, are you saying that by doing this we're giving the forester more confidence in standing for his or her professional decisions on how the forest should be managed? Is that what you're getting at?

Mr Denys: That's right, exactly. It gives them the confidence to stand there and the confidence so they know that their peers will support them in the decisions they take.

Ms Martel: Thank you, Alec, for the presentation. Tell me, the disciplinary measures that are in place at the association now, is there any public involvement?

Mr Denys: No. Right now, in the disciplinary procedures there's no public involvement. Under the new licensing proposal, there will be public involvement in both the complaints and investigations area and in the discipline area.

Ms Martel: The public becomes involved in another way in terms of reinforcing your accountability because they're going to be directly involved in at least two of the very important committees.

Mr Denys: That's right. As well, they will have membership on the council itself.

Ms Martel: I don't want to say the licensing issue is rather late, but we have de facto movement towards this now because, as you've already explained, it was certainly recommended in the class EA. But under the changes in the Crown Forest Sustainability Act in 1995, your sign-off is that much more important now than it was under the old Crown Timber Act. Where we are really at the next logical step, for foresters in the province to be given that additional responsibility of licensing, discipline, accreditation standards etc. Would you agree?

Mr Denys: That's right, exactly.

Ms Martel: You mentioned the consultation process that you went through. Because I received the newsletter over two years, I had a chance to watch that debate in the newsletter. As the debate went on, the articles that were set aside grew as well, as you had continued consultation.

Do you feel quite confident, given the extensive consultation and given the work that the committee did, that the issues that would have been of concern or were of concern, even to members, have been addressed and that you come to the government now, or come to all members, with a proposal that by and large has quite unanimous support? Except for the amendments that David will move tomorrow, which should deal with Monte Hummel's concerns, by and large, you have addressed over that two-year period concerns of members and the public and other attached associations that this is the right way to go and the reasons why?

Mr Denys: That's right. It's been a process, as you say, that's gone on over two years. We have redrafted and drafted the act quite a few number of times to address those concerns. We're quite confident that what we have now is an excellent piece of legislation that will lead to a licensing body that will in fact serve the public interest.

Mr Bart Maves (Niagara Falls): Thank you very much for your presentation. In subsection 3(2) of the bill, I want to talk about exclusions.

"The practice of professional forestry does not include acts performed in relation to the management or manipulation of forests if they are performed,

"(a) personally by individuals on land which they own and they do not affect the safety, health or welfare of the general public or the property of others."

Who determines that? Do you know? I know you've been involved in this process for quite some time. My question might be better directed to David. Who determines whether or not the forestry work someone wants to do on their own property is going to affect the safety, health or welfare of the general public?

Mr Denys: Generally, I think the way the process would work is there would be a complaint with respect to an operation that would be brought to the attention of the association. We would have to investigate and determine

if those conditions were met or were violated and then proceed from there.

Mr Maves: The association would at that point be called in and make a determination whether or not this person should continue to do the forestry that they're doing on their own property?

Mr Denys: That's right. There's not going to be any notification type of process. If you're going to do forestry work and if you're exempt, you're exempt. The onus is on the owner to ensure that he's exempt based on the conditions of his exemption. He has to determine whether or not he is going to violate public safety, public interest.

Mr Maves: If it's determined that they believe the forestry that's being done by an individual who owns this property may be against the general welfare or the property of others, that landowner, he or she, will then be forced to employ a licensed member of the foresters' association or cease and desist from forestry?

Mr Denys: Yes. They would have to employ a licensed professional. Once we've determined that the exemption no longer applies, then yes, they would have to employ a licensed professional forester to continue to do that work and make the remedies.

Mr Maves: What happens in other provinces currently? Are the professional foresters' associations licensing bodies also?

Mr Denys: The two other largest forestry provinces, British Columbia and Quebec, both have licensed professional foresters in those situations.

Mr Hastings: Sir, I'm a little perplexed by the great parade with which people come before these committees regarding the establishment of new organizations. Please take this in the broadest sense of sincerity.

Mr Ramsay has in this bill sections dealing with the disclosure of bad boys and girls who might foul up in their practice and standards of forestry. There's a discipline committee and there's a registrar and the whole structure. We have that sort of thing under the Regulated Health Professions Act with all the colleges regarding their concerns.

I'm never absolutely convinced that the public is totally confident in these organizations, including your own, which is about to probably get passed, regarding the disclosure of somebody who fouls up as a professional forester. It's very clear in here, if you look at subsection 32(7), that the discipline committee may publish the name or some of the data regarding a person who has run afoul of the professionalism of this proposed organization.

I'm wondering whether you are comfortable with that particular provision of "may." If you're arguing that we need this organization for greater enhancement of professional accountability etc, then the public wants to have the capacity of understanding that there will be disclosure of a person who fouls up and gets themselves into trouble, should that ever occur. I don't know what the circumstances would be, but obviously, because Mr Ramsay has that structure in place, you must be anticipating that it could occur.

Do you feel comfortable with that particular provision on the disclosure of the investigation and the resolution of a discipline case before the discipline committee of your proposed organization?

Mr Denys: I know that the use of the terms "may" and "shall" are very much part of the drafting of legislation. Dave Curtis is here, who drafted this legislation. If I may defer that question to him, maybe he could explain why we chose to use that term "may."

Mr Hastings: It gives you a large ambit.

Mr Denys: This is David Curtis, who is a registered professional forester. As well as that, he is educated as a lawyer.

Mr David Curtis: Thank you, good to be here. I hope I can provide some assistance.

The general practice in this kind of thing is to make sure that the names are publicized. I think the statute is drafted around the need to protect the public interest. The presumption is that the names will be put out.

The committee needs to have the flexibility for situations that may violate the rights of the individual who comes before it. If there are cases where their own personal safety may be affected or if a case has not been completely decided, putting someone's name out — procedural provisions such as this that we have in the legislation are largely borrowed from existing statutes. This is the practice in Ontario, to do things this way. It simply gives the discipline committee the capability to protect the individual's rights when the need arises.

As I said, we have to be open with this. The hearings will be open, to the extent possible. There is a member of the public on the discipline committee and this sort of thing. That is the presumption.

1610

Mr Hastings: But the presumption is to protect the rights of the individual here.

Mr Curtis: Well, the —

Mr Hastings: But you trot it out. I've seen this with other organizations that were enhancing and advancing the public interest. I think what's happening is the reverse. If you'd simply say it's for the protection of the individual rights of the person being disciplined, I'd understand that. I think you're cloaking it — I mean this in all sincerity; I've seen it with another organization — as enhancing the public interest. I don't think it does personally. I think it protects the rights of the individuals, which needs to be done, but it doesn't say that in the bill as far as I can read.

The Chair: I'm going to interrupt. That's our time. Thank you for coming to give assistance to answer that question, and thank you very much for your presentation.

WESTWIND FOREST STEWARDSHIP

The Chair: We now call representatives from Westwind Forest Stewardship, please. Good afternoon. Welcome to the committee. When you're ready to begin, please start by introducing yourself for the Hansard record.

Mr John Walker: Thank you for the opportunity to make a presentation. My name is John Walker and I'm the manager of an incorporated, not-for-profit, community-based organization headquartered in Parry Sound.

Westwind is a holder of a sustainable forest licence issued by the Minister of Natural Resources for an area known as the French Severn Forest. Our licence covers the crown land between the French River in the north, the Severn River in the south, Georgian Bay to the west and Algonquin Park to the east.

Westwind was incorporated in April 1997, and following a year of negotiating and business planning was issued the sustainable forest licence in May of this year.

Westwind, as an SFL holder, is unique in all of Ontario in that we are a not-for-profit company. The board of directors is predominantly members selected from the public of the Parry Sound and Muskoka area. The minority of the board membership is comprised of individuals recommended by the variety of large and small forestry companies that harvest wood in our area. I would say that we're truly an alternate delivery mechanism.

As holders of the SFL, our responsibilities include all forest management planning requirements, all forest operations plant compliance activities, all forest renewal activities and the collection and reporting of a variety of forest and related values information. These responsibilities are all legislated under the conditions of our licence by the Crown Forest Sustainability Act which, as you know, received royal assent almost exactly four years ago.

All of the costs of delivering these responsibilities are borne by the forest operators in our area. As I mentioned, they range from big players such as Tembec and Domtar to very small family businesses whose livelihood is dependent on their ability to sustain harvesting operations in an affordable way.

As you well know, our very location in the province, and the fact that we're three to four hours from a population of seven million Ontarians and northern Americans, presents a fishbowl opportunity or challenge, if there ever was one.

The reasons Westwind is extremely interested in the passage of Bill 71, respecting the regulation of the practice of professional forestry, are several. Taking off from Mr Ramsay's question, being a not-for-profit and community-based group, we feel somewhat vulnerable from time to time with regard to "big government and big industry." I emphasize the quotes because I don't use that in a derogatory sense but primarily to compare big government, big industry with a small organization such as ours.

We don't have the resources to do anything but rely on sound professional judgment and experience of the foresters from within our own staff, government bureaucracies and private industry. Having all practitioners of the profession in a regulated, licensed environment will surely level the playing field for small organizations such as our unique venture. The appropriate checks and balances will be more assured than at present.

The practice of forestry is both an art and a science. I know this first-hand from my personal experience over the past 30 years. You are all aware of many of the controversies surrounding our practice. Indeed, the current Lands for Life initiative is serving to once again remind us of these issues. I also know from first-hand experience that the type of forestry practices introduced in our forests by the professionals from the Ministry of Natural Resources are second to none in the world. Continuing incorporation of best science, along with a host or a core of people having 20 or more years' local experience, has led to this world-class status, yet the controversies continue.

We as an organization know that education, show-and-tell, field trips and so on are the best way to demonstrate to the public that we are professionals, that we know what we're doing. Indeed we, and I speak on behalf of the board of directors in Westwind, have initiated a series of local seminars which are becoming sold out as we announce them. In this regard, we as foresters wish to have, and I personally feel we deserve to have, the recognition that a regulated licensing function will bring. I further believe that over time such a mechanism will go a long way to bringing understanding and thus acceptance to the profession. Consequently, a less confrontational environment will prevail.

I'm aware of the concern of the member for Muskoka-Georgian Bay with respect to Bill 71. Indeed, he kindly shared these with me and other foresters in a letter dated November 27. Mr Grimmert is concerned about limiting participation in the profession, as well as overregulating the forest industry. While I respect these concerns, I don't quite share them in their entirety. Those folks I work with who may not quite meet the established criteria to be licensed by the association nevertheless welcome the move to recognition by way of licensing. Indeed, many of them are anticipating with some eagerness finding out what they will need to do to either broaden their experience or expand their knowledge in order to become recognized. They will finally have something concrete to work for.

With respect to overregulating the industry, I refer back to my earlier point and say again that Westwind, in the Muskoka-Parry Sound region, is committed not only to a healthy forest but a healthy industry. We believe that a regulated licensing system will go a long way to enabling both on the crown forest under our sustainable licence. We're already in our short lifetime gaining some recognition as lobbyists — those are Mr Grimmert's words — for both ecologically sustainable forest practices and for a vibrant, healthy, sustainable industry.

Early in 1999, Westwind Forest Stewardship hopes to be the first organization in Ontario, and indeed in Canada, to be associated with the delivery of a variety of forest certification mechanisms under the banner of the internationally recognized Forest Stewardship Council.

Certification is sometimes referred to, as you know, as green stamping. We are pursuing a partnership with the Rain Forest Alliance, who are accredited FSC, Forest

Stewardship Council, certifiers. We will also become knowledgeable about, and promoters of, other recognized but different certification systems such as the CSA system and the international standards organization certification system.

Initiating certification into the Ontario forest scene will ensure two things. First, it will benefit our industry's position in an increasingly sensitive global market. Second, and as important, it will significantly contribute to our continuing commitment to sustainable forest practices. The government, in my view, has an opportunity here to support the whole forest certification exercise by passing this bill, thus ensuring our forests and the values contained within and dependent on our forests are being managed by licensed professionals.

The Chair: We have two minutes for questions from each caucus. We'll begin with Ms Martel for the NDP.

1620

Ms Martel: Thank you for coming today. I was curious about your comments with respect to the two benefits of certification, specifically the first one, which was to benefit the industry's position in the global economy. Certainly, as you look at other jurisdictions and how good or how poor their forest practices may be, not only do we put industry at risk but any number of workers and their communities as well, depending on what we're doing. I wonder if you could just elaborate on the advantage that you see for Ontario to be a leader, because of licensing, in the global market with respect to the products that we are putting out there and the value that's attached to them because of the standards and because of the people behind the standards who are practising in our forests.

Mr Walker: I, along with several members of the board of directors, have recently attended some deliberations with the folks in the US who are accredited to deliver certification. It's my belief that if we can add to our tool bag, the fact that our foresters are licensed professionals will go a long way to add a level of credibility to the certification that we will deliver. We will follow the standards as set forth by the international organization, but having that licence will enhance our tool bag relative to our certification.

Certification of forest products is catching on, it really is. It's not necessarily being driven by big industry or by large consumers, but it's being driven by a demand at a grassroots level. Ontario's being in a position to join that certified wood and products stream can do nothing but benefit all of us.

The Chair: To the government.

Mr Maves: Thank you very much for coming and making your presentation. What percentage of forests right now that are forested are crown land, roughly?

Interjection: About 85%.

Mr Walker: I can only speak with certainty about my own forest. In my particular forest that we look after it's about 50%.

Mr Maves: I'll follow up on the question that I asked the previous person. Is there an exclusion to practice for

someone who, on their property — the other 15% — is doing some forestry? The previous presenter, when I asked this question, said that if someone complains that they think some improper forestry is being practised on that person's own property, then this new association can come in and make a determination, yes or no, as to whether forestry is being practised properly and then tell them that in order to continue, they have to hire someone with a licence. This is my understanding of this. There doesn't appear to be any kind of appeal mechanism. The forestry body that's going to be set up will be, in effect, a police department of forestry which is going to occur on individuals' privately owned properties.

Mr Walker: That was not my understanding of the reading of the bill. I'm sorry. I defer to David, but it's not my understanding that policing on private land would occur, by any stretch. Certainly professional advice could be offered and, in my opinion, it would be up to the owner of the land to take or reject that opinion. In some instances, and in our instance in particular, the regional municipality of Muskoka is attempting to put through a brave bylaw regarding sustainable forestry on private land. Indeed, as that evolves and matures, it may include something like that, but that would not be, in my view, the association's approach to dealing with forestry matters on private land, on a unilateral basis.

Mr Ramsay: It's good to hear about your organization, because as you know and most of us who are very concerned about forestry, as we have forests and forest workers in our ridings, understand, in many areas such as yours and in the areas of Timiskaming and Nipissing that I have interest in, these non-profit or co-operative organizations have been formed now where the forest companies have gotten together and formed these basic co-ops and non-profit organizations to hire a professional team of foresters to do the forestry work for them.

What I think is so interesting about it and so beneficial about the new way is that instead of the competing interests that you used to have and companies trying to beat up the bush for their own species and maybe age classes they particularly needed for their operation, now we can look at the whole forest area and manage the forest for the best of the forest and have a rational direction of wood to the appropriate plant or mill.

It's frustrating for me as a northerner who is beginning to understand this, because I accept those limitations. I'm on a big learning curve. I wish all our school children across this province could go on these open houses and these tours. I wish every Ontarian could do that because we see such inflammatory rhetoric in the media from time to time about how our forests are managed. While I think there were tremendous sins done in the past in this particular industry, as there were in a lot of other industries, we have now come to learn about how we treat the environment with regard to this industry and mining and other resource-extraction industries and do a great job today. I wish we could do more on that educational front. I know the industry is trying to do it. I think through organizations like yours, you're going to be able to

accomplish that right at the grassroots level. I commend you for that.

The Chair: On behalf of all members of the committee, I thank you for coming before us this afternoon.

Mr Walker: Thank you for the opportunity.

TEMBEC INC

The Chair: Now calling representatives from Tembec Inc, please. Good afternoon. Welcome to the committee. Please begin by introducing yourself for the Hansard record.

Mr Jim Lopez: My name is Jim Lopez. I'm a vice-president for a division of Tembec's forest products group. Personally, I work and live in North Bay, Ontario.

I'd like to tell you for just a minute a little bit about the background of our company so you understand where I'm coming from. I'm here representing a member of the industry, not necessarily the whole industry. Tembec operates 10 mills within Ontario with over 2,500 employees in the province. The company operates a total of 21 mills throughout Canada and has 6,000 employees in the country. The company is currently one of the largest operators on public land throughout eastern Canada, with operations stretching from Manitoba to New Brunswick.

I've worked with the company for over nine years now. I am not a professional forester. I have no affiliation with the OPFA. I'm here today to maybe give you just an industry professional perspective on the legislation in front of you that's being debated.

Our company has been recognized recently by a number of environmental groups as one of the leading forest managers in the province, and we've been recognized in some publications as such. Also, I'd like to point out that Tembec has been one of the first companies within Canada to receive FSC certification, which John Walker discussed earlier, for our forest management practices on private land in Ontario. As such, I'd like to point out that the company is quite proud of our forest management practices. We're quite proud of what we've accomplished, and we're interested in any legislation that's going to continue to advance sustainable forestry throughout Ontario.

First of all, I'd like to make several key points. One is we believe Ontario has one of the most progressive pieces of forest management legislation in the world in the Crown Forest Sustainability Act, a piece of legislation that we believe is second to none in Canada and maybe throughout the entire world. Quite frankly, we think Ontario should be proud of it and boast this piece of legislation, because it bodes well for the future of forest management on public land in this province.

We believe also there is community of foresters in Ontario who are very professional and highly committed to the sustainability of the forests in this province. It's exciting. It's interesting to see the passion that our foresters have for managing the forests while still contributing to positive growth in the forest industry and employment in the forest industry in this province.

1630

The licensing of professional foresters is about establishing some standards for foresters, because these people are on the front line of forest management in this province. Therefore, we think a set of standards should be held up to these people if they are to manage our resources for the future. We believe licensing professional foresters is also another important step in establishing the credibility of Ontario in the critical eye of the world community towards forest management.

As we know, there's increasing public awareness in Ontario, Canada and indeed throughout the world for forest management practices, and there's now increasing accountability on governments and companies to practise sustainable forest management. Companies are increasingly aware of potential boycotts of our product, potential bad publicity, bad advertising by what we call ENGOS throughout our marketplace, threatening the very viability of our operations. So we think it is a time for foresters, companies and indeed the government to become more proactive in ensuring that we hold high standards for forest management practices in our province and that indeed we're proud of them and put those standards forward for the world to see.

As was mentioned earlier, many of the forest management activities over the last several years have now been transferred to sustainable forestry licences, like Westwind and others, and forest products companies. This means we're responsible for planning, tree marking, regeneration and public consultation. As well, there are a number of other activities that used to be carried out by the Ministry of Natural Resources in the past. If we're going to have this happen, we have to make sure that we have professionals carrying out these activities on the front line.

We believe this act would be a measure to help narrow the gap between crown land and private land forest management over the long term. This may be a somewhat controversial statement, but we believe there is a large gap between the management of private land as opposed to crown land. There is no standard for private land management right now in terms of forestry practices. While we are not encouraging the government to legislate this, we are encouraging the government to make sure that there are professional, licensed foresters out there who are available for people who have private woodlots who want to practise forest management on these private woodlots. We think making these professionals available to those individuals would go a long way.

Another point I'd like to make is that it's interesting to note that the debate in Ontario has subtly shifted away from forest management practices to more discussion on protected spaces. Maybe this is what the member was referring to earlier with the letter from Monte Hummel, when he talked about this act falling short in addressing the concerns on protected spaces.

We believe it's a matter of debate that has come out in the Lands for Life process on how much space should be protected from any industrial or commercial activity. It's

not a debate on whether the industrial or commercial activity is carried out on crown land sustainably, it's simply a matter of how much should be to the exclusion of that. While some people look at this as a negative type of debate, we look at this as a very positive type of debate, because we're no longer talking about, "Do we have sustainable forest management practices?" We believe that we do, and it's becoming increasingly recognized by the ENGOS that we do also.

I'd like to point out that licensing is not a threat to our company. We do not feel this is going to impede our ability in any way to carry out our business in Ontario. Lastly, we'd like to recommend that the government should proceed with the passing of Bill 71. I'll be happy to take your questions now.

The Chair: Thank you very much. We have about two minutes for questions from each caucus. We begin with the government caucus.

Mr Jerry J. Ouellette (Oshawa): You mentioned the number of mills you have throughout Ontario and across Canada. What sort of product do you harvest? What do they process?

Mr Lopez: It's an extremely wide variety, from hardwoods like maple, cherry and oak, poplars to all types of conifers, white pine, red pine, spruce, jack pine.

Mr Ouellette: Mostly slicer mills or veneer mills?

Mr Lopez: We have no veneer mills in Ontario; we have one in Quebec.

Mr Ouellette: When you mentioned the words "sustainable forest management," managing forests for different purposes becomes clear. Obviously, for an industry, the type of forests that are managed are quite different from what would be a natural progression, moving from a coniferous to a deciduous forest. What sort of practices do you envision that an association would promote? Some of the concerns are that we're going to only manage to make sure that the industry is self-sustained. Are there other aspects that management would progress with?

Mr Lopez: First of all, I'd like to point out that technically I'm not professionally qualified to address that, so I'll just give you my opinion. When I interact with professional foresters within my company, professional foresters within the government and other professional foresters involved in forest management, I believe there's a very strong, watchful eye there towards making sure that there is fibre available for mills and jobs throughout Ontario. But increasingly important in their eyes is also the management of a balanced ecosystem there. It's just marvellous to talk to them about the types of things we do in going in and planning a particular cut, considering things like goshawks' nests, wildlife habitats of different sorts, to make sure that we are not overly infringing on these habitats.

Mr Ramsay: Thank you very much, Mr Lopez, for your presentation. I think you really hit on the nub of the issue, why a bill such as this is really timely, and that is that the whole forestry debate, as you've said, has really moved away from the discussion of forestry practice to

protected spaces. I think that's because there is a general lack of confidence in the population that we are, government and industry, managing the forests properly. Therefore, the uninformed reaction is that, because of that, we have to have more protected spaces; that's the only way to have a sustainable environment, if we just basically rope off more and more land so that industry doesn't get to it.

Those of us who have learned and grown with the industry over the years have seen how the industry has moved to more and more sustainability. We understand that the industry is as interested as anybody is in sustainability and that we now have the ability and are carrying out a very sustainable forest operation in this province. As you've said, this is now being recognized internationally. This is just one more step, having this bill, to give the public confidence that our forestry practice in Ontario is second to none. I agree with you, it's world class for sure.

Mr Lopez: Your point is excellent in terms of the perceptions of the public. I wish every citizen in Ontario could have attended the round table meetings that we had in the Lands for Life process, because I think the people who went into those who were not from the industry, and particularly people who weren't from the northern part of the province where the industry practises, had a very different perception of what actually happens in the bush. I think when they walked away from the public consultations and the little subgroups that we put together there, most of them had changed their minds. They came away with a much better understanding of the sustainable forestry practices that we have on crown land in Ontario.

Mr Ramsay: Do I have another second?

The Chair: Yes, very briefly.

Mr Ramsay: I know on these tours we'll be out in the bush and the tour guide will say, "We're in a clear-cut." People look around, and there are trees all over the place. They see trees that are left to regenerate the area naturally and where the industry comes back in 20 years and takes those seed trees out as the new forest grows. I think people still remember the old pictures from British Columbia of hillsides absolutely devastated, and they think that's what forestry is today, and it isn't.

Mr Lopez: That's correct.

Ms Martel: Thank you, Jim, for coming today. I appreciate the comments on the CFSA, and I will tell the leader, who was the former minister, what you had to say. I'm sure he'd be interested.

I was interested in your comments with respect to licensing as a mechanism in the long term to lessen the gap between forest management on private woodlots and forest management on crown lands. I'm wondering, how much wood does Tembec buy off private woodlots?

Mr Lopez: From private woodlots, we probably buy in excess of 200,000 cubic metres annually in Ontario.

Ms Martel: Are your comments with respect to lessening the gap being made as a result of practices you've seen on private woodlots as a result of having to purchase off private woodlots to feed your mills?

Mr Lopez: When you look at the private wood industry in Ontario, it's a fairly small world, so you're aware of the practices that are going on. A lot of people who have woodlots don't even live on those woodlots; they have them as property up north somewhere and are interested in generating revenue off of those woodlots but may not be well informed as to proper forest management practices. So the first fellow who comes along and makes him the best deal would get that, whereas if he were more informed about licensed professional foresters being available to practise forest management on the woodlots, he may be encouraged to utilize these professionals.

The Chair: On behalf of all the members of the committee, thank you for coming before us this afternoon. We appreciated your words of advice.

1640

ONTARIO FORESTRY ASSOCIATION

The Chair: I now call on the representatives from the Ontario Forestry Association, please. Good afternoon, and welcome to our committee. When you're settled and ready to begin, please start by introducing yourself for the Hansard record.

Mr Rick Monzon: Madam Chair and members of the resources development committee, thank you for inviting me and giving me the opportunity to address the committee on this very important piece of legislation. My name is Rick Monzon. I'm the executive director of the Ontario Forestry Association, and I'm a registered professional forester in Ontario.

The Ontario Forestry Association supports Bill 71; it supports a bill which will provide the profession of forestry with the power to license registered professional foresters in Ontario and will promote high standards of sustainable forest management.

The Ontario Forestry Association, for those of you who may not know, is a not-for-profit landowner-based association with over 1,500 members across Ontario. Its mandate is to raise awareness and understanding of all aspects of Ontario's forests and to develop a commitment to stewardship and forest ecosystems. In doing this, we promote the need for a balanced perspective.

We have a variety of objectives. Those are printed on the handout, and I will not go through them all. It's sufficient to say that we develop and implement educational programs; we design and implement products; we do promotional activities; we have done and continue to do some direct reforestation and afforestation; and we continue to take a public stand on major forest issues in Ontario, a stand that we hope reflects a balanced view.

Our key program areas, the key clients that our organization serves, are landowner education and advice on woodland or woodlot management. These are southern Ontario landowners, by and large. Also, we're very involved in the delivery of balanced forestry and environmental education programs for elementary and high school students across Ontario.

Southern Ontario is a primary area of concern for the Ontario Forestry Association, given the interests of our landowner members, but all of Ontario is of concern to us with respect to the activities that are related to sustainable forest management and education.

In southern Ontario, OFA objectives speak to the support of sustainable forestry, conservation and the need for a balanced perspective. In both northern and particularly southern Ontario, the Ontario government is now moving out of the direct management of forests. Municipalities have some authority here with respect to the Trees Act and the development and implementation of tree-cutting bylaws. But in southern Ontario, direct landowner assistance, in terms of advice and on-the-ground work activities, has been withdrawn.

The Ontario Forestry Association has been, and continues to be, involved in assisting landowners to manage their private woodlands in a sustainable manner through educational materials and forest management program administration. The latter is best exemplified by the managed forest tax incentive program, otherwise known as MFTIP, which is administered by the Ontario Forestry Association and the Ontario woodlot association. MFTIP is a voluntary Ontario government program that provides lower property taxes to participating landowners who agree to conserve and manage their forests through the preparation of a forest management plan. Professional foresters are involved in the preparation of forest management plans for landowners for both MFTIP and other purposes. Professional foresters are also involved in the provision of a wide variety of consulting services on both private and public lands.

In carrying out these activities, it is important that landowners are aware, and continue to be aware, of the sustainability aspects of the activities taking place in their woodlots, and it is important that professional foresters understand their obligation for the promotion of the highest standards of sustainable forest management. It is important that landowners are aware of this obligation and that landowners understand that they have recourse in the event that the highest professional standards are not maintained. It is important that accountability be established and enforced.

In southern Ontario, anyone can describe themselves as a forestry consultant. Consultants also include professionals and technical people from a number of other disciplines: biologists, ecologists, planners, naturalists. They are in business as individuals or as staff of companies and agencies, and they are not usually subject to professional standards. It is critically important that these standards be set and that landowners understand that there is an independent professional body with the power to license professionals and monitor performance. The OFA does not suggest that all forestry consultants be licensed by the OPFA; we do subscribe, however, to the concept of a registered professional body to license professional foresters and to hold them accountable for their work. Other disciplines would be exempt.

In southern Ontario, in our experience, all landowners are concerned about their forest properties; all have a sense of responsibility and pride of ownership. In addition, there are now more baby-boomer-generation landowners, who are concerned about the environment, who want to manage the right way and who are looking to conserve the woodlots and manage them on a sustainable basis for a variety of purposes. Landowners want to do the right thing. Our recent experience with MFTIP indicates that landowners take great pride in developing quality forest management plans and working with qualified consultants.

In southern Ontario, the southern Ontario woodlots are in rough shape; many have been purposely high-graded, many have been neglected and most are producing far below their potential from the standpoint of sustainable development. Whether they are being managed for wood products or environmental protection, most are far below potential. This has been going on for a long, long time, and the situation will continue to get worse if no action is taken. Long-term impacts involve environmental degradation — I've indicated a number of examples of this: loss of topsoil, reduced water quality. There's a variety of economic considerations: fewer primary sector forestry jobs, fewer secondary and tertiary jobs and less employment in recreation due to the lack of high-quality and biodiversity-rich woodlands. There are social considerations: fewer high-quality woodlands for passive and active recreation, loss of critical earth- and life-science values.

Will licensing make a difference? We believe it will. Foresters involved in private land forestry will promote and implement high standards of sustainable forest management. This action alone will make a difference on private lands, when foresters are directly involved. The development of these high standards will also set the bar for others involved in this type of work. It will set a higher standard of excellence, and this will appeal to private landowners. In addition, landowners will have recourse in the event of poor workmanship and sloppy practices. The Ontario Professional Foresters Association will then be positioned to inspect work relative to standards and determine if sanctions are required. The end result will be an increased value of the private forest estate through sustainability, biodiversity and improved growing stock. The OFA believes this is good public policy. The accountabilities will be clear, as foresters will be required to adhere to professional standards set and administered by an independent licensing body.

Our recommendations: The Ontario Forestry Association supports this bill. We believe it's good public policy; it will be good for Ontario, for the public forests, for the private forests and for the landowners. We urge that this committee support it as well.

The Chair: Thank you very much. We have time for two minutes of questions from each caucus. We begin with the Liberal caucus.

Mr Ramsay: Thank you for your presentation. I'm very pleased to see a perspective coming from private land forests. Having lived in northern Ontario now for 26

years, a great amount of our land is crown land, and it is a very different situation in the north than it is in the south. But the forests that are left in southern Ontario are extremely important to our economy in the province and to the environment. Your presentation increased my knowledge of how private landowners in the south feel about their forests. I'm also pleased with the incentive programs that the Ontario government does have in place to encourage proper forest practice of private forests in Ontario.

1650

I agree with you; I think the vast majority of private owners want to manage their forest in the most sustainable manner. I'm glad you brought that forward. I'm very glad you support this bill and recognize that licensing is going to increase not only the awareness but I think the confidence in the work that the professional forester does, both on crown land and on private land. Thank you very much.

Ms Martel: I think I'm confused, so let me just ask these questions. Right now, under the MFTIP — I know the whole acronym but I won't say it out — professional foresters are involved, so they have to sign off.

Mr Monzon: That's correct.

Ms Martel: These would be people who are members of the association, by and large, who would be using the designation RPF now, right?

Mr Monzon: Yes.

Ms Martel: So those folks are already involved in assisting people with management of private woodlots.

Mr Monzon: That's correct.

Ms Martel: The only way I can see this working in terms of making the situation better on private woodlots is if people were turning away from people who are putting themselves out only as forestry consultants versus people who are now actually signing off, who in effect are members of the association, can have disciplinary actions taken against them, already have to adhere to high standards of expertise and make sure they are involved in ongoing educational issues etc. I'm not here to be dismayed by your support because I'm supportive too, but what I'm clearly not understanding is why and how it is that merely through licensing, things are going to get better on private woodlots. Do you know what I mean?

Mr Monzon: There's no standard at this point developed for management plans, for the standards of management plans. I say that in recognition that under the managed forest tax incentive program the government has established a standard that the plan has to meet. However, within the development of that plan there are many technical components of that. To use a hypothetical example, if you have a 50-acre woodlot, you can have a plan done by a professional which will come out as a class A plan and you will also have a plan which will come out as a class C. Both would be acceptable under managed forest tax. My concern and the concern of the Ontario Forestry Association is that we want to see the class A. It will be the development of the professional and technical

standards within the body of the plan where the significant difference will be made.

We also believe that private landowners, and I tried to make this point in the presentation, are becoming more and more concerned about the quality of their woodlands. They want to take care of them. They want to manage them in the right way. We have found an increasing sense of pride on behalf of private owners who feel that they have a really first-class plan. They are very proud of it, they like to show it off and they're looking continuously for ways to make it better. Does that help?

Ms Martel: I think so. Thank you.

The Chair: We have three questions from the government side.

Mr Hastings: Mr Monzon, does your organization believe that this bill should have been sent to the Red Tape Commission for examination? That would be my first question. Second, has your organization, through its board of directors, ever supported a municipality that wanted to stipulate and set up a bylaw in terms of protecting heritage trees on private property in urban settings?

Mr Monzon: The answer to the first question is no, we have not looked at this from the standpoint of being required to go to the Red Tape Commission.

From the standpoint of a bylaw with respect to heritage trees, in my recollection, to be honest, I cannot say for sure. I don't know that we have or we haven't. Certainly we have been called upon from time to time to make comments on tree-cutting bylaws that are put forward by municipalities. I'm just not aware whether or not the issue of heritage trees has come up.

Mr Ouellette: Just to follow up on that, as one of the founding members for the South-Central Ontario Forestry Association, we heard a number of different incidents, and in the past I've heard of an actual case from Ontario Hydro where individuals had chained themselves to a tree because they were going to cut down a heritage tree. The foresters tried to explain that it was actually a telephone pole with lines and the wires were covered in ivy, but these are different things.

One of my concerns is that forest management is always after the fact, so to speak. In the past two weeks, and I know it was very specifically two weeks ago, I was reviewing a red pine plot and it had developed into what I usually see in southern Ontario as a monoculture. The problem I find is that a lot of woodlot owners have no idea of the potential within those specific areas. How does this association intend to address those, to develop those monocultures into developing forests, and how is it going to benefit that segment of the community?

Mr Monzon: One of the ways we do that is through a series of workshops and/or seminars that we hold, or work with other organizations to hold, to bring that awareness to the forefront with respect to landowners. As an example, we have an annual conference coming up in February and one of the workshops at that conference will be red pine plantation management.

The larger issue, I believe, is one of awareness and trying to get the information to landowners as to what needs to be done. In doing that, we do work ourselves and we do work with private land stewardship co-ordinators through the Ministry of Natural Resources. We have done some work with some of the municipalities and some of the people in the municipalities who are responsible for tree cutting — tree commissioners etc — and we have done some work with some of the local mills, but it's a large problem.

I think in many instances we forget where the establishment of the monocultures came from and how it arose. If you go back to the 1910s and 1920s when a lot of southern Ontario was essentially being blown away, as it had been farmed out, that's when the monoculture became established through the planting of Scotch pine, red pine and some Jack pine, but mostly red pine, and that continued through to the 1970s and 1980s. It's not something that's practised a lot now. In the plantings that we have done, and we've done over six million trees in southern Ontario in the past several years, the majority of the landowners wanted not a monoculture; they wanted a mixture of hardwoods and softwoods. They wanted it in a manner which met their particular objectives. It's a difficult one to deal with because, as you're aware, if you leave a 25-year-old red pine plantation too long it gets more and more difficult to manage as opposed to becoming easier. But the issue is awareness and education.

The Chair: Thank you very much for your presentation this afternoon. We appreciate your point of view.

1700

GRANT FOREST PRODUCTS

The Chair: I now call representatives from Grant Forest Products, please. Good afternoon and welcome to the committee. When you're settled, please begin and start by introducing yourself for the Hansard record.

Mr Bob Fleet: Good afternoon, ladies and gentlemen. Thank you for your time and attention. My name is Bob Fleet. I'm a registered professional forester.

By way of a brief introduction, I graduated from forestry at the University of Toronto in 1980. It seems like yesterday. I worked for the Ministry of Natural Resources from 1977 until 1994. Obviously, if you look at the year of graduation and when I started work, there were some summer jobs in there that I've included. I work now with Grant Forest Products and I have since 1994. My title and capacity at Grant Forest Products is the vice-president of woodlands.

I have a very brief presentation for you, and hopefully you have some questions for me.

Some information about Grant Forest Products: It's a Canadian-owned, northern-Ontario-owned private company. We own and run two oriented strand board mills in Ontario, one in Englehart, Ontario, and the other in Timmins, Ontario. These two mills consume two million cubic metres of crown aspen every year. To put that into

perspective — I'm rounding, of course — two million cubic metres of crown wood is approximately 9% or 10% of the provincial allowable harvest.

Of the board that we make, 95% is exported to the United States, so that market and our company are intertwined. Our company is very important to the balance of trade for this province in terms of being largely an exporting manufacturing company.

We have approximately 600 direct employees in Ontario with a few in Michigan, and we have about another 600 what I would call indirect employees. Those would be people who get a paycheck from somebody other than Grant but work almost exclusively for Grant Forest Products; so about 1,200 employees at least.

I came this afternoon to tell you that I support Bill 71. In my view, it complements at least two existing pieces of legislation. One is the Crown Forest Sustainability Act and the other is the Environmental Assessment Act. Those are two pieces of legislation that, having spent my working life in Ontario in forestry, I am fairly familiar with.

One of the reasons I support Bill 71 is because it reinforces both the provincial and national objectives of forest sustainability, which in my view is in the public interest.

Another thing that is extremely important to me is that this Bill 71, at the end of the day, identifies an accountable person, and that would be the registered professional forester. What it will do for me is it will tell me, or I will know, that when I hire a forester I am hiring somebody who is competent and acting to at least a prescribed minimum level of conduct. That is becoming more and more important to me, as a person responsible for the consumption of 10% of Ontario's allowable harvest, because with the transfer of responsibility for forest operations out of the government environment and into the private sector, everybody — the government, the public and private people — has to know that Ontario's forests will continue to be managed sustainably.

The final point I'd like to make — it's not on the overhead — in terms of one more thing that's important to the company is that, as I mentioned, our markets are almost 95% American. That would be in the neighbourhood of about \$250 million a year of annual sales in American money. One thing that's becoming increasingly important in the international market is the ability to certify your product using the Canadian Standards Association or a host of certifications that are available and starting to be demanded by the more prudent consumer. I see this bill as helping our company obtain certification of that Ontario wood that we use to make our product as well.

That's really all I have to say this afternoon. I'd love to entertain any questions.

The Chair: We begin with the NDP caucus and we have slightly over three minutes per caucus for questions.

Ms Martel: Thank you for coming today. You've come a long way. Let me ask you, does Grant have a sustainable forestry licence?

Mr Fleet: We actually have no sustainable forest licence in our name, but we are shareholders of three or four sustainable forest licences where there would be more than one company which is the holder.

Ms Martel: So you yourself would not be directly signing off forest management plans themselves as a consequence; it would be the other companies that you have a relationship with.

Mr Fleet: It would be a partnership company, the shares of which would be held by our company and a number of other companies in the vicinity of our mill, which would hire a forester who would write a plan, who would sign off. Indirectly that person would be an employee of our company.

Ms Martel: So while this might not affect you directly, it would have at MNR, so I feel OK about still asking the question. Under the current scenario, as a registered professional forester and I'm assuming a member of the association, if a complaint were brought against you under the self-certification process that's in place now, there would be some penalty that would be attached to you for work that is not well done or for work that is very poorly done that puts forest or wildlife habitat etc at risk. Is that correct?

Mr Fleet: Do you mean a penalty by my association?

Ms Martel: Yes.

Mr Fleet: I guess there could be. I don't think I've heard of one.

Ms Martel: If you were at MNR, or before when you were at MNR — I'm assuming you worked in the bush and worked as a professional forester — what penalty, if any, would there have been against you for work that was improperly done if a public complaint were brought? Would there be any penalty?

Mr Fleet: I'd be guessing at the penalty. I suppose the association may have been able to revoke my certification.

Ms Martel: What would that have meant to you in clear terms?

Mr Fleet: Under the old?

Ms Martel: Before this bill was passed.

Mr Fleet: It would not have meant a great deal.

Ms Martel: The fact that you would have a licence or have to be licensed now, or people you were hiring would have to be licensed now, and if that is revoked they would probably not work in the province, is really what is at the heart of most of this bill. You are much more accountable or professional foresters are much more accountable for their work because if the work is shoddily done they run a risk of not being able to be employed in the province.

Mr Fleet: I think you put it very well.

Ms Martel: So in terms of your work now outside of the public sector and with a private sector company, the ability for that to happen is just as important because so much of the government's responsibilities for forest management have now been shifted to the private sector. If you are not able to compete in the global market and people don't want to buy your products because they don't like your forestry practices, that's also going to have a

direct impact on you and the people who are employed by Grant and the communities that are sustained by Grant.

Mr Fleet: Absolutely.

Ms Martel: So we should be supporting this because of the fact that the licensing and the ability of the association to revoke it is so much stronger than whatever penalty might be in place now if someone who goes out and says they are a registered professional forester indeed does a shoddy job.

Mr Fleet: Yes. I want to be careful with my answer only in the sense that I agree mostly with what you say. The difference is that previously having the certification revoked would not necessarily have led to loss of employment and under this regime it would. I think that's the point you were making and that's why it is important.

Ms Martel: Certainly for the public seeing that, the public understanding that is the remedy, that's a much stronger position for them in terms of wanting to know about accountability.

Mr Fleet: Yes.

Mr Ouellette: Thank you for your presentation. You mentioned that annually you devote two million cubits —

Mr Fleet: Cubic metres.

Mr Ouellette: What percentage would come from small cutter-skidder operations, say in your Timmins office? Do you contract out to individuals to bring in, to purchase wood?

Mr Fleet: At Timmins we purchase all of the wood from five or six other large companies, but many of those companies do in fact use what I would describe as the independent cutter-skidder to bring the wood to the mill.

1710

Mr Ouellette: So you wouldn't know what percentage would come from the —

Mr Fleet: No. I'd be comfortable saying 20% at least of that 800,000.

Mr Ouellette: What impact would you think the change would have on the small cutter-skidder operations, if any? Would you expect anything to reflect further down at that level? With the changing dynamics of the forest industry they're becoming a smaller and smaller percentage of participants in it as technology changes with your forwarders etc, and participation out there — I'm just wondering about the impact of the small operations.

Mr Fleet: In the part of the world where we draw our wood from, I don't see it having too much of an impact on the small operators per se and, more important —

Mr Ouellette: So when I talk to some of your suppliers tonight it will be OK to say that you don't see any impact on them at all.

Mr Fleet: No, that wouldn't be the case. There will be an impact but I think it will be a matter of degrees.

Mr Ouellette: I know some of your suppliers in the area up there. One other question: Was your operation the one that had the fire two years ago?

Mr Fleet: The Timmins mill burned to the ground two years ago, but at that time we didn't own it; we just acquired it in September. It was someone else.

Mr Ouellette: As an impact on the industry — as I mentioned, the technology changes — would you see it as increasing the number of participants in the forestry industry or decreasing it, or basically staying the same?

Mr Fleet: At the forest management — analysis, planning, long-term sustainability, wood determination — it's going to inevitably end up in an increase in the number of players.

Mr Ouellette: OK, thank you. Those are all the questions I have, Chair.

The Chair: Mr Hastings, did you wish to question?

Mr Hastings: Mr Fleet, I'm wondering about the licensing standards. Do you believe, if this piece of legislation had already been passed, that this organization would have had a greater impact in the Lands for Life debate?

Mr Fleet: I don't know that the results brought forward by the round table may have been different, but I think there might have been some better information floating around in the public about why the result was the way it was, had the legislation already been passed.

Mr Hastings: Because you would have as an organization an enhanced professional status among the participants.

Mr Fleet: Yes.

Mr Hastings: One final question: You have read the bill, I presume, in great detail and thought about it. Do you have any concerns regarding the role of the registrar and his or her powers under the investigation section of part VIII regarding reasonable and probable grounds that a member is guilty of professional misconduct etc? Do you believe there ought to be some built-in safeguards either within the bill itself or through regulation? Do you find it a little scary, in other words?

Mr Fleet: I don't find it scary from the perspective that I think I conduct myself as a forester at a high standard; therefore it doesn't scare me. If it were scary to somebody, hopefully they'd deserve to be because they might not have been conducting themselves to the highest standard they should have.

Mr Hastings: You're not concerned about what could be interpreted as reasonable or probable grounds for a fishing expedition, as I've seen in other similarly related sectors but outside this sector?

Mr Fleet: I would have to go back and read it again to give you an answer. I don't mean to skate on it but I'd just have to go back and reread that.

Mr Ramsay: Bob is a constituent of mine. I welcome you to Queen's Park and these committee hearings. I appreciate very much your attendance here.

We've heard from a lot of presenters today, and you've reinforced that in your presentation, that by setting the bar high, by licensing of foresters, it will maybe arm you and your company and this very important industry with some armament that we need in a more highly politicized industry because of the increasing public interest and scrutiny of what your industry does and how it manages the forests.

Do you see that as helping to accomplish that like certification does, that in this case the licensing of foresters will help our industry and help our province to convince the world that the forestry practice you're carrying out today is done in a very sustainable manner?

Mr Fleet: Yes. That's one of the major reasons why I'm here today to support the bill.

The Chair: On behalf of all the members of the committee, thank you for coming today. We very much appreciate your insight into this.

DONOHUE INC

The Chair: Our final presenter this afternoon is Donohue Inc. Good afternoon and welcome. We have your brief, so if you'll begin by introducing yourself, please.

Mr François Dumoulin: I would like first to thank you, Madam Chair and members of the committee, for this opportunity to present Donohue's view on Bill 71.

My name is François Dumoulin. I'm a 20-year member of the Quebec Order of Forest Engineers. I hold a bachelor's degree in forestry from Laval University and a master's degree from the University of British Columbia. At Donohue I'm the corporate director of forestry.

In a few words, my role is as an internal adviser to Donohue's top management and to professional foresters in our four woodlands divisions in Quebec. I also represent Donohue on provincial and national forestry and industry committees.

A bit of background on Donohue: Donohue is one of the world's leading producers of newsprint, lumber and market pulp. Donohue has operations in Quebec, Ontario, British Columbia and Texas. We are involved in forest management in both Quebec and Ontario.

Donohue's operations in Ontario: First on the mill side, we have one newsprint mill in Thorold. It uses about 80% of de-inked pulp and 20% of thermomechanical pulp made out of wood chips. We also have Donohue Recycling. It's one of the largest handlers of recycled blue box materials in Canada and it's based in Toronto.

On the woodlands side, we manage three sustainable forest licences and we are also shareholders of a partnership that manages a fourth licence. To manage these licences, we've got on staff seven registered professional foresters. They recently delivered three forest management plans. All three Donohue SFLs underwent successful independent forest audits in the last two years.

Our foresters were active in the Lands for Life public consultation process and some of them were also members of the teams that developed the forest management planning manual, the forest information manual and the Ontario Forest Industry Association code of forest practices.

Why is Bill 71 a good thing for Donohue? First, you've got to look at the context. As has been said before, the government is moving away from direct forest management in Ontario, as it is in other provinces. There is an increasing demand for forest values. The public is more

informed and more demanding. Clearly, there's a demand for better protection of public interests and for credibility and transparency in the forest management process.

To answer these demands, we see great potential in a self-governing professional association regulated by appropriate legislation, somewhat similar to what we have in Quebec, the Quebec Forest Engineers Act.

Allow me to say a few words on Donohue's experience in Quebec. Donohue in Quebec has 14 sawmills, three newsprint mills and two pulp mills. It's the largest licence holder in the province, with about 19% of all the annually allowable softwood cut.

We have on staff to manage these forests 45 licensed professional foresters. They are all members of the Quebec Order of Forest Engineers. This order is regulated by the Forest Engineers Act, which was enacted in 1921. The order has about 2,030 members. Its mission is clearly stated: to protect the public's interest in the management of forests. It is directed by a board of directors with regional representation. It has a code of ethics; it has a continuing education program; it has a complaints committee; it has two inspectors on staff. I've been personally inspected twice so far, so it does work. They also have a discipline committee.

1720

In the last few weeks we had public hearings in the regions of the province of Quebec regarding the revision of the Quebec Forest Act. Clearly, we see that more responsibilities will be put on the shoulders of the foresters. They will be, as they are now, held accountable for what they do. Many stakeholders are asking for less regulation. That is to be replaced by management by objectives. The job is increasingly more complex and will be increasingly more complex. Knowledge is evolving rapidly in Quebec like elsewhere in the forestry business. It's driven mostly by increased demands on the forest.

Our registered professional foresters must incorporate this knowledge in the development of key documents of the forest act: the 25-year, five-year and annual forest management plans and the annual report. As is the case in Ontario, these plans are the blueprints for all forest management activities. They explicitly specify what will be done, when, where and why, taking into consideration a wealth of other values such as wildlife habitat, ecosystems integrity, recreation, soil protection and so on.

In conclusion, we see lots of similarities between Ontario and Quebec regarding the management of forests on crown land. The Forest Engineers Act truly works in Quebec and we believe that a similar act, Bill 71, would work as well in the Ontario context. It is a good way to ensure that forests in Ontario are well managed and that the public's interest is well taken care of. This is important for the current generation of Ontarians but probably even more important for the generations to come.

The Chair: Thank you very much; about two minutes for questions from each caucus. We begin with the government caucus.

Mr Ouellette: Thank you for your presentation. Earlier on, one of the presentations mentioned the pro-

fessional foresters providing services in areas of tree marking. In my previous life I dealt with buyers from Pennsylvania and New York, and one of the common complaints was that the trees that were actually marked to be harvested were not always the best trees. In their perception, the trees that were left were higher-quality trees, obviously for seed trees for future development and future growth.

How do you envision future markings or future harvesting going on to ensure that those high-quality trees remain? In my opinion, the industry is designed to capture the best aspect of the forest. In the short term we could take the high-grade trees, as was talked about when we talked about high-grading, but in the long-term development of the forest we get into complicated matters. How would you see this as solving that situation?

Mr Dumoulin: I don't see too much of a relationship between the tree marking and the act that is proposed here. Basically, what you need is to have a good set of rules on how to perform the tree marking and to develop those rules. To make sure that they are well applied, you need licensed foresters. That's the way it works in Quebec. But the actual tree marking is performed by forest technicians. To make sure that in the future we don't end up with high-grading, you need to have a good set of rules for tree marking. In Quebec, tree marking is a tough business. It's really tough to handle that. You've got so many criteria to analyze when you're in the forest, it's amazing.

Mr Ouellette: So you don't see professional foresters as providing a tree marking service?

Mr Dumoulin: In Quebec, some licensed professional foresters provide that service. But any consulting firm that provides that kind of service needs to have licensed professional foresters on their staff to make sure the people who carry on the tree marking are well qualified to do so. But these could be technicians. It's a job you can be trained for in a given forest. Many forests are different and what you need then is someone who can deal with that.

Mr Ramsay: Thank you very much for your presentation. I very much appreciate the effort you've made in giving us this perspective from another province that, as you've outlined to us, has had this sort of legislation in effect for quite a while now, and assuring myself and the rest of the committee members that this type of legislation is successful and works very well with the industry. I very much appreciate that. Thank you again for coming.

Ms Martel: Merci, monsieur Dumoulin, d'être venu cet après-midi. Because you have told us already that for 20 years you have been a member of the Quebec Order of Forest Engineers, so you are licensed in Quebec, I would like to ask you: What are the concrete differences that you see in terms of your responsibilities, your accountability as a licensed member in Quebec versus what your responsibility and your accountability are in Ontario, where licensing is not yet in place?

Mr Dumoulin: I'm not familiar enough with some aspects of the forest act in Ontario. In Quebec, the forest management plans are key documents. Basically, they're

the groupings of whatever we're going to do in the forest. Therefore in Quebec, the forest act says that these plans must be signed by a licensed forester. I suppose that's probably something a bit similar in terms of registered professional forester in Ontario.

To answer your question, I would say that in Quebec right now there's that association or that order that looks after all the foresters and makes sure that they follow the standards. If they don't, you've got no other possibility: They're kicked out of the order and they can't work in forestry. What I understand is that in Ontario they may be kicked out of the association but can still practise forestry. You may not use the same title but you're still advising people on forestry. In Quebec you can't do that. If you're kicked out, you can't present yourself as a person who —

Ms Martel: If I read part of your comments on page 3 of 4 with respect to the order, as I look at it and as you have described, there's quite an intense level of scrutiny with respect to professional licensed foresters' conduct that you've already outlined.

Mr Dumoulin: Just to give you an example, and my numbers may not be totally right, I believe that every year they send about 200 questionnaires and these questionnaires take at least a day to fill in. They cover most of the pieces of regulation that control our profession in Quebec. These 200 foresters have to fill that in and submit those questionnaires. These questionnaires are reviewed and a

number of them are selected for the inspection, about 50 a year. It's quite a comprehensive process that we have in place. It's a process that is evolving. It's getting tougher and tougher as the public is asking for tougher and tougher credibility, if you want, from the foresters.

The Chair: Thank you very much. We appreciate your coming today.

Mr Dumoulin: My pleasure.

The Chair: Colleagues, that's our last presentation this afternoon, and I think I'm OK in saying a very interesting afternoon of presentations. I thank all those who are here this afternoon who have taken the time to share their knowledge and their advice with us. We really do welcome that.

The clause-by-clause consideration of this bill will occur tomorrow afternoon. Because we are doing it slightly differently and we are beginning with another bill, it's a little bit difficult for me to give you an exact time as to when we'll consider this bill. I guess we'll just have to play it by ear, so you'll have to stay tuned. My sense is that the first bill won't have a lot of amendments to it, so it may go fairly quickly. But there are always surprises. I just caution you to stay tuned. We'll do both tomorrow.

Are there any further issues which should be discussed this afternoon? Seeing none, we'll reconvene tomorrow afternoon at 3:30 following standing orders.

The committee adjourned at 1731.

CONTENTS

Tuesday 15 December 1998

| | |
|---|--------------|
| Professional Foresters Act, 1998, Bill 71, Mr Ramsay / | |
| Loi de 1998 sur les forestiers professionnels, projet de loi 71, M. Ramsay | R-627 |
| Canadian Institute of Forestry..... | R-627 |
| Mr Bruce Ferguson | |
| Ontario Professional Foresters' Association..... | R-629 |
| Mr Alec Denys | |
| Mr David Curtis | |
| Westwind Forest Stewardship | R-632 |
| Mr John Walker | |
| Tembec Inc | R-634 |
| Mr Jim Lopez | |
| Ontario Forestry Association | R-636 |
| Mr Rick Monzon | |
| Grant Forest Products..... | R-639 |
| Mr Bob Fleet | |
| Donohue Inc | R-641 |
| Mr François Dumoulin | |

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr Marcel Beaubien (Lambton PC)

Ms Shelley Martel (Sudbury East / -Est ND)

Mr David Ramsay (Timiskaming L)

Mr Wayne Wettlaufer (Kitchener PC)

Also taking part / Autres participants et participantes

Mr Jerry J. Ouellette (Oshawa PC)

Clerk / Greffier

Mr Viktor Kaczkowski

Staff / Personnel

Mr Lewis Yeager, research officer, Legislative Research Service



**Legislative Assembly
of Ontario**

Second Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 36^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 16 December 1998

**Journal
des débats
(Hansard)**

Mercredi 16 décembre 1998

**Standing committee on
resources development**

Professional Foresters Act, 1998

**Comité permanent du
développement des ressources**

**Loi de 1998 sur
les forestiers professionnels**

**Environmental Protection
Amendment Act, 1998**

**Loi de 1998 modifiant la Loi
sur la protection
de l'environnement**

Chair: Brenda Elliott
Clerk: Viktor Kaczowski

Présidente : Brenda Elliott
Greffier : Viktor Kaczowski

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'Index

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting Service
3330 Whitney Block, 99 Wellesley St W
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENTCOMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Wednesday 16 December 1998

Mercredi 16 décembre 1998

The committee met at 1546 in committee room 1.

PROFESSIONAL FORESTERS ACT, 1998

LOI DE 1998 SUR
LES FORESTIERS PROFESSIONNELS

Consideration of Bill 71, An Act respecting the regulation of the practice of Professional Forestry / Projet de loi 71, Loi concernant la réglementation de l'exercice de la profession de forestier.

The Chair (Mrs Brenda Elliott): The standing committee on resources development is called to order. Our purpose this afternoon is to attend clause-by-clause hearing of both Bill 34 and Bill 71. Because we have an environment bill in the House, we'll move directly to Bill 71, An Act respecting the regulation of the practice of Professional Forestry. Comments or questions as we begin our discussion of the bill?

Mr David Ramsay (Timiskaming): It's been brought to my attention by some of the government members that they feel we need more time to consider clause-by-clause of Bill 71. There are some concerns that are being expressed that I'm only now finding out about. To accommodate that and to try to keep the bill alive, I'd like to move a motion that would do two things. I'll move the motion and then we can discuss it.

The motion would be that we request permission for the resources development committee to sit for up to two days in either January or February for clause-by-clause consideration of Bill 71, and that we request the government House leader to carry over the bill into the next session of Parliament if the House prorogues the Legislature.

I'm quite open as to the terminology of this. We just don't know if we're going to adjourn or if it's a prorogation. We're not sure. Of course, if we prorogue, all bills die except for those that are carried over. This would be my attempt to try to keep the bill alive and I believe that's the government members' wish also. That's the motion.

The Chair: Does anyone wish to speak to that motion that's now on the floor?

Ms Shelley Martel (Sudbury East): I do, because I'm concerned about it. I appreciate that it's being moved by the mover of the bill. However, let me raise two concerns.

It is not as if people were not aware that this bill was coming forward. If you go back and look at the history of this particular bill, the professional foresters association

spent quite some time lobbying members about what they wanted to do in an extensive way this fall, so there was quite an extensive lobby done and a number of MPPs were included in that. It is also true that long before that the foresters association had met with the Ministry of Natural Resources and had talked to them about the extensive consultation they had. They had gone through the bill and, as I understand it, had assistance in the drafting of the bill. The Ministry of Natural Resources was well aware that this was going to be coming forward, that all they were looking for was a sponsor, because the ministry itself was reluctant to bring it forward, for reasons I have yet to understand.

I find it passing strange that we are here with two days to go and suddenly a number of concerns are coming forward. I'm going to assume they are concerns of the Ministry of Natural Resources, because I haven't yet had a chance to hear from the government members. I'm assuming now concerns are coming forward from MNR which frankly I think should have been dealt with a long time ago.

We've put Mr Ramsay in an awkward position. We had a number of people who were here yesterday who have spent a lot of effort and a lot of time to do this right and to get support. Frankly, at the 11th hour someone is coming forward — and again I assume it's ministry staff — to voice objections and concerns that should have been dealt with a long time ago. I resent that this is happening at the very last hour, because we are putting a lot of people in a very bad position.

Second, I would really like some clarification as to whether or not the government is even in a position to carry forward a single piece of legislation if the House prorogues. It was not my understanding that legislation could be so-called "saved" and carried forward into the next session if indeed the government calls a new Parliament. I would like to be very clear that that in fact is even a possibility before I would ever agree to having that done. I'm very concerned, and this is probably in the back of everyone's mind, that the House will not sit again.

We have come this far, we are this close. This is the third time the foresters have tried to do this and we may well lose a piece of legislation that I think has widespread support among members and affiliated associations. We should deal with it.

The Chair: Just in conversation with the clerk about whether or not a bill can be transferred into the next ses-

sion in the event of prorogation, my understanding is yes, if it is done by way of a motion. So that is accurate. Mr Ramsay's motion would be in order.

Ms Martel: Thank you. May I raise a second point then, Madam Chair? Can I get some confirmation from the government members that their House leader is going to give consent to carrying this piece of legislation forward, that this has been dealt with by his office and they are clearly here expressing what he will do?

Mr Peter L. Preston (Brant-Haldimand): I'm not in a position to tell you what the House leader is going to do. We are certainly going to request — we're not fighting against this bill; we are all in favour of it. For us to hear that it's been on for months — I was advised less than a month ago, probably less than three weeks ago, about this bill. I was in favour of it then, I'm in favour of it now, but I'm not in favour of some of the wording in here.

Mr Ramsay has been provided with a set of loose guidelines about what needs to be done. It was not MNR staff exclusively who requested the changes. There is some language in here that allows some broad interpretations of people's capacities and we want that tightened up.

If you're suggesting that we should vote on a bill that we don't like just because we haven't got enough time to study it, I'm afraid that's not the way I operate and I would have to be against this bill even though I want the bill to go through. I would rather wait and vote for a piece of legislation that is right than vote now on something that should have been changed.

Ms Martel: Then perhaps someone can give me some indication of what the exact concerns are and why they could not be dealt with this afternoon after the other legislation that we were supposed to deal with first anyway.

Mr Preston: I'll give you a very loose interpretation. Some of the wording in the bill is very loose.

Mr Ouellette, you speak to that; you're the one who decided there's a problem with it, and I agree with you.

Ms Martel, you want someone; we're all someone.

The Chair: I would ask that your comments be directed through the Chair, please.

Mr Preston: Sorry, Chair.

Mr Jerry J. Ouellette (Oshawa): In regard to the motion, first of all, I'd like to congratulate Mr Ramsay on his good work on this piece of legislation, because I think it's very good. There are some specific concerns about an area; for example, area 3(1), and I understand an amendment is coming forward. I have not had an opportunity to fully review the amendment and the impact of that on the scope of the professional forestry practice, the guidelines and their ability to deal with other aspects of the forestry, whether it's cutter-skidders, whether it's landscapers, whether it affects municipalities or if Ontario Hydro is putting a line through or if a pipeline is going through, how those come into play in those specific aspects.

There are a number of things. Specifically, as well, I understand we have seen the amendment for the practice by individuals and Mr Ramsay has been very accommodating on an amendment in that area as well. Quite spec-

cifically, I think there were 17 areas that the Red Tape Commission had concerns about. We didn't have the opportunity to go over that, or at least I didn't. I was only brought in on this committee yesterday, from personal interest as opposed to being actually on the resources committee. Mr Ramsay has been very accommodating on that.

The one thing I would ask — I don't know if the government has discussed it — on the motion as it has been brought forward is, is it amenable to two separate motions or do we need it as one motion to have the committee sit for carry-over?

Mr Ramsay: It doesn't matter to me.

Mr Ouellette: We had discussions on the carry-over and there did not appear to be any difficulties from my perception of the conversations we've had of carrying over in the event of proroguing, just in case that came. But we did not have discussions with any other body about giving the committee the authority to sit as well, and I'd ask Mr Ramsay about possibly separating that because I don't want to cause conflicts with the motion as brought forward.

Mr Ramsay: Madam Chair, I'd be quite happy to see the motion split into two separate requests if that is what the government wants. The reason I had suggested that we get on with this is that if we do come back in the spring, we don't know how long that would be for. I thought that if in the intersession we were able to sit for a day, which is all it might be, then we would have everything ready to go so that when and if we do come back, hopefully the government House leader could call the bill right into the Legislature for third reading.

If the clerk would split the motion into two requests, that's fine.

The Chair: Just for clarification, the new motion would then read —

Mr Ramsay: That we request permission for the resources development committee to sit for up to two days in the intersession — I guess we could say that; I had it before in either January or February.

Then it would be separate now that we request the government House leader to carry over the bill into the next session of Parliament, if required.

Mr Ted Chudleigh (Halton North): First of all, the Ministry of Natural Resources has great support for this particular bill and congratulates Mr Ramsay for bringing it forward. The Attorney General's ministry has not had a chance to review it, and because of the exclusivity of some of the powers within the bill, we think they should. That's one of the reasons why we want some extra time on this bill to go forward. The Ministry of Natural Resources will be expressing that interest to the House leader's office, to encourage him to carry the bill over.

The Chair: Further questions or comments? Seeing none, we have two motions on the floor. We'll deal with the first motion, requesting that the standing committee on resources development meet in either January or February in the intersession. All those in favour? Opposed? Carried.

The second motion dealt with the carry-over into the next session in the event of proroguing. All those in favour? Opposed? One opposed. It's carried.

Any further business for the standing committee on resources development? At this point we will recess and reconvene at 10 to 5 to deal with Bill 34. Thank you.

The committee recessed from 1559 to 1651.

ENVIRONMENTAL PROTECTION
AMENDMENT ACT, 1998
LOI DE 1998 MODIFIANT LA LOI
SUR LA PROTECTION
DE L'ENVIRONNEMENT

Consideration of Bill 34, An Act to amend the Environmental Protection Act / Projet de loi 34, Loi modifiant la Loi sur la protection de l'environnement.

The Chair: All right, colleagues, we reconvene for clause-by-clause consideration of Bill 34, An Act to amend the Environmental Protection Act. We have the bill before us and my first question as we begin is, are there any questions pertaining to section 1 of the bill? Seeing none, shall section 1 carry? All those in favour? Carried.

Section 2: Questions or comments or amendments? Seeing none, shall section 2 carry? Carried.

Section 3: Questions or comments?

Mr Jack Carroll (Chatham-Kent): Will this be the last chance I have to make any comments?

The Chair: It's moving along very quickly, so I think so.

Mr Carroll: I mean, is this the appropriate place for me to make just some general comments?

Mr Bruce Crozier (Essex South): Spare us till we've passed it and then those of us who want to leave will leave.

Mr Carroll: I just wanted to say a couple of things. First of all, I want to thank members of the committee for getting the bill to the stage where we at least had some public hearings, and that involved all three parties. I think the public hearings were worthwhile. We had a lot of interest from some very divergent sources: the OMA, the motor vehicle manufacturers' association, certainly the petroleum industry. So we had a lot of input in a lot of various areas; quite conflicting input I might add, actually in many cases diametrically opposed input, all seemingly put forward as fact.

I'm not sure that what we have here is exactly —

Mr Bart Maves (Niagara Falls): Is he taking a shot at someone?

Interjection.

Mr Carroll: There was certainly a lot of different input, but I think we need to have more discussion on this issue. My hope is that the members of the committee would work with me to try to advance the agenda on cleaner fuel by engaging the Ministry of the Environment and the Ministry of Energy into a discussion about the use of oxygenates in fuel, the use of ethanol in fuel, the whole

area of renewable resources used as an additive to motor fuel.

I don't hold out any particular illusions as to what's going to happen to this bill when we refer it back to the House. I would hope that all of you on the committee will join with me in asking that the discussion not stop, that we do what we can to prolong the discussion so that we can work on this issue that I think is very much a positive for the environment. It's certainly positive for the agricultural community and positive for job creation in the province.

Mr David Christopherson (Hamilton Centre): Let me say that I've been pleased to provide my support for this bill, and I do want to recognize and acknowledge Mr Carroll's fairness in recognizing the role that former Agriculture Minister Elmer Buchanan and a former MPP from Chatham, Randy Hope, have played in the development of an ethanol entity within Ontario, a seed planted that clearly will grow and come to fruition as the years unfold.

I think all of us were moved tremendously — certainly I was — by the comments of Dr Boadway who spoke of the stunning negative health effects of our air directly related to pollutants right now and emphasizing the importance of our doing something about this above and beyond partisan lines. Recognize that the air is breathed by Tories, Liberals and New Democrats alike and there's no special party membership that holds one immune to the effects of bad air.

It's also been a pleasure to be a part of talking about improving our air quality as opposed to many of the debates in the House, which have seen us putting forward a defence of protections that have been in place for decades that, in my opinion, your government has dismantled piece by piece, very much to the detriment, and in the opposite direction I'd say, through you, Chair, to Mr Carroll, of the goals that you're trying to achieve with this bill.

Let me close by saying that it's been a particular joy to watch the members of the government side recognizing there are times government needs to play a very strong role and mandate that some things be done even when there are elements of the economy that don't want a mandatory aspect to a particular measure. It's been refreshing and I would hope that those who spoke in favour of making these measures mandatory felt that oxygen and recognized how good it feels to put the public good as the top priority and make everything else subservient to the public good, because at the end of the day that is often what mandatory measures like this mean.

With that, I will wrap up, Chair.

Mr Doug Galt (Northumberland): I think it's interesting as you work through a bill such as this — it's a very simple bill. What is it, four sections, five sections? It points out the difficulty we have in the Ministry of the Environment as you try and come up with something. This one seems quite simple when you first look at it. They put some alcohol in the gasoline and it's good for agriculture, it's good for the environment, and then you start looking at it and, oh dear, it raises the volatility level. Then you end

up with volatile organics coming off it at a greater level and therefore other regulations need to come into play to recognize this happening. Yes, it reduces particulates, it reduces some of the other pollutants, but with every move you make to try and protect the environment, it does get complicated and you just never win, trying to please either those who are pushing for environmental improvements or those who are sort of resisting and holding back.

I certainly applaud Mr Carroll for bringing this forward. The intent is right. In some of the chats we've had I think there are some technical difficulties and maybe it needs the technical expertise of those who have that information for input into the bill, but certainly in theory it's great and it's something that probably should happen down the road, and because of his interest and drive it probably will in time.

The Chair: Further questions and comments to section 3?

Mr Christopherson: That speech sounded an awful lot like the kiss of death for this bill to me.

The Chair: Seeing none, shall section 3 carry? All those in favour? Carried.

Shall the long title of the bill carry? Those in favour? Carried.

Shall Bill 34 then carry? All those in favour? Carried.

Shall I then report this bill to the House? Agreed.

Thank you, colleagues. On that note, our committee shall adjourn and I guess we will reconvene at the call of the Chair some time in January or February.

The committee adjourned at 1700.

CONTENTS

Wednesday 16 December 1998

| | |
|--|--------------|
| Professional Foresters Act, 1998, Bill 71, <i>Mr Ramsay</i> / | |
| Loi de 1998 sur les forestiers professionnels, projet de loi 71, <i>M. Ramsay</i> | R-645 |
| Environmental Protection Amendment Act, Bill 34, <i>Mr Carroll</i> / | |
| Loi de 1998 modifiant la Loi sur la protection de l'environnement, | |
| projet de loi 34, <i>M. Carroll</i> | R-647 |

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair / Présidente

Mrs Brenda Elliott (Guelph PC)

Vice-Chair / Vice-Président

Mr Peter L. Preston (Brant-Haldimand PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

Mr Ted Chudleigh (Halton North / -Nord PC)

Mr Sean G. Conway (Renfrew North / -Nord L)

Mrs Brenda Elliott (Guelph PC)

Mr Doug Galt (Northumberland PC)

Mr John Hastings (Etobicoke-Rexdale PC)

Mr Pat Hoy (Essex-Kent L)

Mr Bart Maves (Niagara Falls PC)

Mr Peter L. Preston (Brant-Haldimand PC)

Substitutions / Membres remplaçants

Mr Bruce Crozier (Essex South / -Sud L)

Ms Shelley Martel (Sudbury East / -Est ND)

Mr Jerry J. Ouellette (Oshawa PC)

Mr David Ramsay (Timiskaming L)

Also taking part / Autres participants et participantes

Mr Jack Carroll (Chatham-Kent PC)

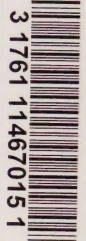
Mr David Christopherson (Hamilton Centre / -Centre ND)

Clerk / Greffier

Mr Viktor Kaczowski

Staff / Personnel

Mr Michael Wood, legislative counsel



3 1761 11467015 1